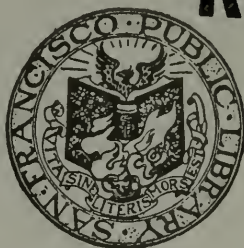


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Appendix to the Journal of the Senate

Legislature of the State of California

1960 Regular Session

Convened February 1, and Adjourned March 26, 1960

REPORTS



LT. GOVERNOR GLENN M. ANDERSON
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
Secretary of the Senate

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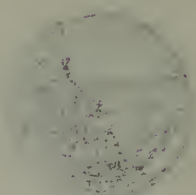


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REPORT OF THE
SENATE FACT FINDING COMMITTEE ON AGRICULTURE

Appointed Pursuant to the Terms of Senate Resolution No. 135 of the
Regular Session of 1959 of the California Legislature

ON

PART A

**Agricultural Operations Report on Agricultural
Programs at Various State Institutions for
the 1958 Calendar Year and the
1958-1959 Fiscal Year**

PART B

**Summary of State College Farm Operations
for the 1958-1959 Fiscal Year**

PART C

**Recommendations re Capital Outlay Expenditures
in the 1959-1960 Budget for Agricultural
Activities at State Institutions**

MEMBERS OF THE COMMITTEE

PAUL L. BYRNE, Chairman

J. WILLIAM BEARD, Vice Chairman

JAMES A. COBEY

NATHAN F. COOMBS

ALAN A. ERHART

JOHN J. HOLLISTER, JR.

ROBERT I. MONTGOMERY

JOHN A. MURDY, JR.

VIRGIL O'SULLIVAN

JOSEPH A. RATTIGAN

WAVERLY JACK SLATTERY

WALTER W. STIERN

J. HOWARD WILLIAMS

PAUL K. HUFF, Executive Secretary



Published by the
SENATE
OF THE STATE OF CALIFORNIA
1960

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

CALIFORNIA LEGISLATURE
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
March 22, 1960

HON. GLENN M. ANDERSON, *President*
and Members of the Senate

GENTLEMEN: The Senate Fact Finding Committee on Agriculture, created by the provisions of Senate Resolution No. 135 of the 1959 Regular Session, submits a report in three parts.

Part A of the report consists of data compiled by the Department of Finance, showing detailed cost figures for farm products produced at the several state institutions conducting agricultural operations. Those figures relating to the Department of Mental Hygiene and Youth Authority institutions are for the 1958-59 fiscal year, while the figures relating to the Department of Corrections are for the 1958 calendar year.

Part B of the report consists of a brief summary of State College Farm Operations for the 1958-59 fiscal year, which information was also prepared for the committee by the Department of Finance.

Part C of the report outlines in some detail committee recommendations relating to capital outlay expenditures in the 1959-60 State Budget for agricultural structures and facilities at the various state institutions conducting farming operations. This review function, formerly a responsibility of the Joint Interim Committee on Agricultural and Livestock Problems, was assigned to the Senate Fact Finding Committee on Agriculture under the provisions of Senate Resolution No. 135. This resolution specifically provides that "Any state agency which proposes the expenditure of any state funds for capital outlay providing for plans, specifications, construction or purchase of new facilities which are to be used for agricultural purposes shall first submit such proposals to the Fact Finding Committee on Agriculture to enable such committee to review and inspect such facilities, equipment or items and to report thereon to the Director of Finance. The Department of Finance shall consider the recommendations of the committee in approving or disapproving any such expenditures in order that any resulting economies may be reflected as soon as practicable."

Respectfully submitted,

PAUL L. BYRNE, *Chairman*

PART A

AGRICULTURAL OPERATIONS REPORT ON AGRICULTURAL PROGRAMS
AT VARIOUS STATE INSTITUTIONS FOR THE 1958 CALENDAR
YEAR AND THE 1958-1959 FISCAL YEAR

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
SACRAMENTO, October 29, 1959

HONORABLE PAUL L. BYRNE, *Chairman*
Senate Fact Finding Committee on Agriculture
State Capitol, Sacramento, California

DEAR SENATOR BYRNE: The attached agricultural operations summary has been prepared pursuant to the recommendations in the July 5, 1956, report of the Joint Legislative Committee on Agricultural and Livestock Problems.

It includes the 1958-59 fiscal year for Mental Hygiene and Youth Authority institutions and the 1958 calendar year for Correctional Industries.

Respectfully submitted,

ROBERT L. HARKNESS, *Assistant Director*

AGRICULTURAL OPERATIONS REPORT

1958-59 FISCAL YEAR

Mental Hygiene
Youth Authority

1958 CALENDAR YEAR
Correctional Industries

GENERAL INFORMATION

STATE INSTITUTIONS CONDUCTING AGRICULTURAL OPERATIONS

| Department and institutions | Superintendent or warden | Industries manager | Assigned to farming | Average daily population |
|----------------------------------|-----------------------------|-----------------------|---------------------------|--------------------------------|
| | Director | Business manager | Patients | Patients |
| Mental Hygiene | | | | |
| Agnews..... | W. Rapaport, M.D.... | C. Hoxie..... | 125 | 4,100 |
| Atascadero..... | R. S. Rood, M.D.... | R. J. Tippins..... | 56 | 1,400 |
| Camarillo..... | F. Garrett, M.D.... | B. W. Macy..... | 86 | 6,430 |
| Mendocino..... | D. Lieberman, M.D.... | A. G. Robertson..... | 89 | 2,400 |
| Napa..... | T. R. Miller, M.D.... | D. J. Bradley..... | 118 | 5,300 |
| Patton..... | O. L. Gericke, M.D.... | H. L. Carter..... | 143 | 4,551 |
| Sonoma..... | T. K. Nelson, M.D.... | T. A. Bravos..... | 41 | 3,850 |
| Stockton..... | F. H. Adams, M.D.... | L. L. Clark..... | 120 | 3,900 |
| | Superintendent | Business manager | Wards | Wards |
| Youth Authority | | | | |
| Fred C. Nelles..... | H. Butterfield..... | J. Oneto..... | 10 | 311 |
| Paso Robles School for Boys.. | G. Spencer..... | A. Anderson..... | 30 | 437 |
| Preston School of Industry.... | P. J. McKusick..... | M. C. Jensen..... | 86 | 756 |
| | Superintendent or warden | Industries manager | Inmates | Inmates |
| Corrections | | | | |
| Institution for Men..... | E. A. Oberhauser..... | E. Shindler..... | 150 | 1,965 |
| Deuel Vocational Institution.. | A. Cook..... | C. L. Ackerman..... | 30 | 1,355 |
| Folsom State Prison..... | R. Heinze..... | A. Satfield..... | 199 | 2,800 |
| San Quentin State Prison..... | F. R. Dickson..... | E. Howell..... | 33 | 4,530 |
| Correctional Training Facility.. | L. E. Wilson..... | M. Rich..... | 180 | 2,545 |

VALUE OF FARM PRODUCTION IN INSTITUTIONS

| Department and institutions | Gross income | | Net income | |
|-------------------------------------|--------------------|--------------------|--------------------|--------------------|
| | 1957-58 | 1958-59 | 1957-58 | 1958-59 |
| Mental Hygiene | | | | |
| Agnews..... | \$277,654 | \$209,287 | \$68,096 | \$36,047 |
| Atascadero..... | 87,927 | 86,823 | 21,533 | 24,405 |
| Camarillo..... | 452,709 | 493,262 | 153,526 | 177,683 |
| Mendocino..... | 293,124 | 283,239 | 42,538 | 51,382 |
| Napa..... | 591,721 | 555,641 | 193,622 | 216,950 |
| Patton..... | 473,521 | 438,329 | 123,003 | 113,702 |
| Sonoma..... | 306,180 | 312,479 | 81,877 | 75,097 |
| Stockton..... | 605,723 | 342,956 | 174,881 | 23,508 |
| Youth Authority | | | | |
| Paso Robles School for Boys..... | 14,712 | 16,147 | 4,592 | 4,881 |
| Preston School of Industry..... | 151,626 | 182,032 | 26,630 | 44,531 |
| Fred C. Nelles School for Boys..... | 4,528 | 5,283 | —3,376 | —3,511 |
| | | 1958 | | 1958 |
| Corrections | | | | |
| Institution for Men†..... | 609,214 | 687,527 | 167,772 | 138,944 |
| Deuel Vocational Institution..... | 200,435 | 179,083 | 48,513 | 20,055 |
| Folsom†..... | 196,827 | 156,164 | 17,700 | 6,741 |
| San Quentin..... | 119,793 | 115,769 | 3,309 | 13,274 |
| Correctional Training Facility..... | 389,568 | 400,606 | 66,980 | 64,063 |
| Totals..... | \$4,775,262 | \$4,464,627 | \$1,191,196 | \$1,007,752 |

† Cannery not included.

DAIRY

NUMBER OF ANIMALS JUNE 30, 1959

| Department and institutions | Cows | Heifers | | Calves | | Bulls | | Dairy |
|-------------------------------------|-----------------|------------|------------|-----------------|----------------|-----------|-----------|--------------|
| | Milking and dry | 2 years | 1 year | 6 months-1 year | Under 6 months | Mature | Young | Dairy total |
| Mental Hygiene | | | | | | | | |
| Atascadero..... | 90 | 22 | 9 | | 23 | 1 | 2 | 147 |
| Camarillo..... | 325 | 37 | 138 | 112 | 48 | 8 | 3 | 671 |
| Mendocino..... | 119 | 7 | 39 | 22 | 27 | 6 | | 220 |
| Napa..... | 253 | | 41 | 54 | | 6 | 8 | 362 |
| Patton..... | 225 | | | 52 | 130 | 4 | 1 | 412 |
| Sonoma..... | 168 | 14 | 60 | 29 | 34 | 3 | 3 | 311 |
| Youth Authority | | | | | | | | |
| Preston School of Industry..... | 112 | 2 | 27 | 24 | 34 | 2 | | 201 |
| Corrections (12/31/58) | | | | | | | | |
| Institution for Men..... | 453 | 153 | 128 | 186 | 96 | 13 | 16 | 1,045 |
| Deuel Vocational Institution..... | 106 | 45 | 36 | 23 | 8 | 1 | | 219 |
| Folsom..... | 153 | 20 | 55 | 11 | 26 | | | 265 |
| San Quentin..... | 132 | 10 | 8 | 18 | 20 | | | 188 |
| Correctional Training Facility..... | 191 | 26 | 71 | 71 | 15 | 2 | 1 | 377 |
| Totals..... | 2,327 | 336 | 612 | 602 | 461 | 46 | 34 | 4,418 |

ANALYSIS OF DAIRY OPERATIONS

| 1957-58 | | | | 1958-59 | | | | | | | | | | | | |
|---------------------------------|--------------------|---------|----------|----------|--------------|-------------|------------------|-------------|---------------|----------|----------------------|-------|-------|--------|--------|--------|
| No. cows | Prod. Lbs. per cow | Costs | | No. cows | Production | | Over-all expense | | Costs per cow | | Cost per gallon milk | | | | | |
| | | Per cow | Per gal. | | Lbs. per cow | Total gals. | Labor | Other costs | Total | Labor | Other costs | Total | | | | |
| Mental Hygiene | | | | | | | | | | | | | | | | |
| Atascadero..... | 63 | 11,037 | \$476 | \$.37 | 66 | 11,585 | 88,910 | \$11,200 | \$23,710 | \$34,920 | \$170 | \$359 | \$529 | \$.13 | \$.27 | \$.40 |
| Camarillo..... | 314 | 11,646 | 601 | .44 | 323 | 11,866 | 445,680 | 72,188 | 123,090 | 195,278 | 224 | 381 | 605 | .16 | .28 | .44 |
| Mendocino..... | 112 | 13,024 | 841 | .56 | 119 | 13,659 | 189,002 | 39,981 | 74,823 | 114,804 | 336 | 629 | 965 | .21 | .40 | .61 |
| Napa..... | 242 | 12,547 | 638 | .44 | 246 | 12,993 | 371,655 | 56,138 | 111,533 | 167,691 | 228 | 451 | 682 | .15 | .30 | .45 |
| Patterson..... | 196 | 12,899 | 671 | .45 | 220 | 12,693 | 324,690 | 54,801 | 102,954 | 157,735 | 249 | 468 | 717 | .17 | .32 | .49 |
| Sonoma..... | 151 | 14,775 | 830 | .48 | 164 | 15,111 | 288,166 | 49,378 | 89,824 | 139,202 | 301 | 548 | 849 | .17 | .31 | .48 |
| Average..... | 188 | 12,481 | 686 | .47 | 190 | 12,908 | 284,684 | 47,282 | 87,660 | 134,942 | 249 | 461 | 710 | .17 | .31 | .48 |
| Youth Authority | | | | | | | | | | | | | | | | |
| Preston School of Industry..... | 96 | 9,143 | 579 | .54 | 109 | 9,598 | 121,653 | 16,392 | 46,405 | 62,797 | 150 | 426 | 576 | .14 | .38 | .52 |
| Corrections | | | | | | | | | | | | | | | | |
| Institution for Men..... | 349 | 12,501 | 686 | .47 | 434 | 12,603 | 637,471 | 38,432 | 306,337 | 344,769 | 89 | 706 | 795 | .06 | .48 | .54 |
| Det. Vocational Inst..... | 100 | 11,805 | 668 | .49 | 103 | 11,306 | 135,414 | 25,417 | 52,141 | 77,558 | 247 | 506 | 753 | .19 | .38 | .57 |
| Folsom..... | 147 | 10,281 | 658 | .55 | 152 | 9,699 | 171,262 | 28,911 | 75,532 | 104,443 | 169 | 441 | 610 | .19 | .50 | .69 |
| San Quentin..... | 140 | 10,800 | 845 | .67 | 139 | 11,269 | 182,132 | 23,790 | 73,395 | 102,185 | 171 | 564 | 735 | .13 | .43 | .56 |
| Corr. Training Facility..... | 182 | 12,362 | 742 | .52 | 188 | 11,838 | 258,823 | 28,139 | 112,430 | 140,569 | 150 | 598 | 748 | .11 | .43 | .56 |
| Average..... | 184 | 11,756 | 713 | .52 | 203 | 11,724 | 277,020 | 28,934 | 124,967 | 153,935 | 142 | 615 | 757 | .11 | .45 | .56 |

NOTES: General

1. Corrections institutions: Atascadero State Hospital and Preston School of Industry train and use inmate milkers exclusively.

2. Sales of breeding stock, surplus animals, by-products, etc., are not credited against costs in preparing these figures.

Corrections

1. All charges except administration, selling and central office expenses are included.

2. Inventory change was not used in calculating Institution for Men figures due to transfer of Metropolitan State Hospital herd in January (1957-58).

Mental Hygiene-Youth Authority

Depreciation, rent, and such expenses as administration, light, power, maintenance of structures, etc., are not included.

SWINE

Number of Animals

| Department and institutions | Fat hogs | Feeders | Pigs | | Sows and gilts | Boars | Total hogs |
|----------------------------------|-------------------|---------|--------|----------|-------------------|-------|---------------|
| | | | Weaned | Suckling | | | |
| | JUNE 30, 1959 | | | | | | |
| Mental Hygiene | | | | | | | |
| Agnews..... | 48 | 216 | 96 | 139 | 70 | 3 | 572 |
| Atascadero..... | 20 | 140 | -- | 55 | 14 | 2 | 231 |
| Mendocino..... | 37 | 251 | 205 | 318 | 52 | 5 | 868 |
| Patton..... | 146 | 232 | 89 | 205 | 66 | 6 | 744 |
| Sonoma..... | 32 | 184 | 55 | 68 | 33 | 3 | 375 |
| Youth Authority | | | | | | | |
| Paso Robles School for Boys..... | 19 | 19 | -- | -- | -- | -- | 38 |
| Preston School of Industry..... | 25 | 130 | 52 | 75 | 31 | 3 | 316 |
| | DECEMBER 31, 1958 | | | | | | |
| Corrections | | | | | | | |
| Institution for Men..... | 55 | 389 | 849 | 295 | 173 | 12 | 1,773 |
| Deuel Vocational Inst..... | 130 | 252 | 151 | 138 | 86 | 4 | 761 |
| Corr. Training Facility..... | 50 | 377 | 243 | 276 | 124 | 5 | 1,095 |
| Totals..... | 562 | 2,190 | 1,740 | 1,569 | 649 | 43 | 6,773 |

Production Live Weight and Cost

| Department and institutions | 1957-58 | | 1958-59 | |
|----------------------------------|------------------------|----------------------------|------------------------|----------------------------|
| | Production live weight | Cost per pound live weight | Production live weight | Cost per pound live weight |
| Mental Hygiene | | | | |
| Agnews..... | 193,927 | .13 | 147,123 | .12 |
| Atascadero..... | 43,080 | .23 | 47,310 | .22 |
| Mendocino..... | 143,385 | .19 | 173,699 | .15 |
| Patton..... | 236,585 | .07 | 260,178 | .08 |
| Sonoma..... | 118,990 | .15 | 134,835 | .17 |
| Youth Authority | | | | |
| Paso Robles School for Boys..... | 32,694 | .11 | 40,063 | .09 |
| Preston School of Industry..... | 86,170 | .16 | 50,193 | .20 |
| 1958 | | | | |
| Corrections | | | | |
| Institution for Men..... | 307,286 | .18 | 371,216 | .17 |
| Deuel Voc. Inst..... | 215,065 | .20 | 272,847 | .16 |
| Corr. Training Facility..... | 238,532 | .23 | 240,463 | .25 |
| Totals..... | 1,870,750 | | 1,737,927 | |

POULTRY AND EGGS

| Department and institutions | 1957-58 | | | | 1958-59 | | | |
|-------------------------------------|-----------------------|---------------------|--------------|-----------|-----------------------|---------------------|--------------|-----------|
| | Laying hens (average) | Dozen eggs produced | Eggs per hen | Cost doz. | Laying hens (average) | Dozen eggs produced | Eggs per hen | Cost doz. |
| Mental Hygiene | | | | | | | | |
| Napa..... | 8,971 | 150,870 | 202 | .32 | 7,743 | 146,310 | 227 | .35 |
| Patton..... | 6,611 | 105,570 | 192 | .34 | 7,910 | 116,685 | 177 | .39 |
| Sonoma..... | 4,759 | 93,828 | 237 | .40 | 4,532 | 85,567 | 227 | .45 |
| Youth Authority | | | | | | | | |
| P.R. School for Boys.... | 664 | 12,150 | 220 | .41 | 750 | 12,720 | 204 | .42 |
| Preston School of Industry..... | 2,850 | 45,690 | 160 | .49 | 2,854 | 50,555 | 213 | .42 |
| | | | | | 1958 | | | |
| Corrections | | | | | | | | |
| Correctional Training Facility..... | 4,339 | 101,160 | 280 | .40 | 4,443 | 107,086 | 289 | .40 |
| Totals..... | 39,591 | 717,551 | | | 28,232 | 518,923 | | |
| Average..... | | | 217 | .33 | | | 221 | .37 |

CROP PRODUCTION

| Department and institutions | Vegetables | | Orchards | | Field crops | |
|-------------------------------------|------------|------------|----------|------------|-------------|------------|
| | Acres | Net income | Acres | Net income | Acres | Net income |
| Mental Hygiene | | | | | | |
| Agnews..... | 274 | \$9,423 | 100 | \$2,025 | 123 | —\$4,004 |
| Atascadero..... | 18 | 1,888 | -- | -- | 431 | —1,540 |
| Camarillo..... | 175 | 35,730 | 40 | —1,032 | 757 | —11,064 |
| Mendocino..... | 83 | —3,369 | 20 | —597 | 544 | —3,390 |
| Napa..... | 124 | 3,428 | 138 | —10,772 | 611 | 4,351 |
| Patton..... | 116 | 9,048 | 36 | 7,164 | 236 | —29,991 |
| Sonoma..... | -- | -- | 86 | —23,465 | -- | -- |
| Youth Authority | | | | | | |
| Paso Robles School for Boys..... | 3 | 84 | -- | -- | 54 | —949 |
| Preston School of Industry..... | 40 | 2,851 | Misc. | —38 | 598 | 2,701 |
| Fred C. Nelles School for Boys..... | 25 | —1,564 | Misc. | —1,947 | -- | -- |
| Corrections | | | | | | |
| Institution for Men..... | 331 | —19,715 | 40 | 2,667 | 1,320 | —1,555 |
| Deuel Vocational Institution..... | -- | -- | -- | -- | 189 | —21,705 |
| Correctional Training Facility..... | -- | -- | -- | -- | 621 | 3,710 |
| Totals..... | 1,189 | \$37,804 | 460 | —\$25,995 | 5,484 | —\$63,436 |

AGNEWS STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-----------|-----------|-----------|
| Total value of farm production----- | \$301,746 | \$277,654 | \$209,287 |
| Total cost of production----- | 236,396 | 209,558 | 173,240 |
| Total net income ----- | \$65,350 | \$68,096 | \$36,047 |
| Hogs ----- | \$20,482 | \$30,480 | \$31,040 |
| Orchard ----- | 30,183 | 15,022 | 2,025 |
| Vegetables ----- | 13,524 | 13,473 | 9,423 |
| Field crops ----- | —296 | 2,470 | —4,004 |
| Food processing ----- | 1,457 | 6,651 | —2,437 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|-------------------------------|---------|----------|---------|----------|---------|----------|
| Acres and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Hogs ----- | 18 | 10 | 18 | 10 | 18 | 10 |
| Orchard ----- | 109 | 15 | 100 | 10 | 100 | 7 |
| Vegetables ----- | 324 | 75 | 231 | 75 | 274 | 67 |
| Field Crops ----- | 76 | 7 | 123 | 3 | 91 | 4 |
| Food processing ----- | — | — | — | — | — | 37 |
| Miscellaneous ----- | 222 | — | 277 | — | 266 | — |
| Totals ----- | 749 | 107 | 749 | 98 | 749 | 125 |
| Total patient population----- | 4,139 | | 4,155 | | 4,100 | |

ENTERPRISE SUMMARIES

| Swine | 1956-57 | 1957-58 | 1958-59 |
|---------------------------------------|-----------|-----------|-----------|
| Total value hog production----- | \$50,688 | \$54,922 | \$49,167 |
| Total cost hog production----- | 30,206 | 24,441 | 18,127 |
| Net income ----- | \$20,482 | \$30,481 | \$31,040 |
| Pork production | | | |
| Cost per pound----- | .15 | .13 | .12 |
| Liveweight ----- | 207,227 | 193,927 | 147,123 |
| Animals (June 30) | | | |
| Fat hogs ----- | 34 | 47 | 48 |
| Feeders ----- | 188 | 235 | 216 |
| Pigs, weaned ----- | 135 | 72 | 96 |
| Pigs, suckling ----- | 230 | 131 | 139 |
| Brood sows ----- | 84 | 70 | 70 |
| Boars ----- | 4 | 3 | 3 |
| Totals ----- | 675 | 558 | 572 |
| Fruit, Nuts and Berries | | | |
| Total value fruit production----- | \$56,148 | \$39,419 | \$27,698 |
| Total cost fruit production----- | 25,964 | 24,397 | 25,673 |
| Net income ----- | \$30,184 | \$15,022 | \$2,025 |
| Production | | | |
| All varieties ----- | 111 acres | 104 acres | 100 acres |
| Vegetables | | | |
| Total value vegetable production----- | \$94,822 | \$81,525 | \$74,643 |
| Total cost vegetable production----- | 81,298 | 68,052 | 65,220 |
| Net income ----- | \$13,524 | \$13,473 | \$9,423 |
| Production | | | |
| All crops ----- | 324 acres | 231 acres | 274 acres |

| Field Crops | 1956-57 | 1957-58 | 1958-59 |
|----------------------------------|----------|-----------|----------|
| Total value crop production----- | \$4,168 | \$6,684 | \$1,305 |
| Total cost crop production ----- | 4,465 | 4,214 | 5,309 |
| Net income ----- | —\$297 | \$2,470 | —\$4,004 |
| <i>Production</i> | | | |
| All crops ----- | 60 acres | 107 acres | 91 acres |
| Cannery | | | |
| Total value of production----- | | | \$56,473 |
| Total cost of production----- | | | 58,910 |
| Net income ----- | | | —\$2,437 |
| <i>Production</i> | | | #10 Cans |
| Vegetables ----- | | | 30,295 |
| Fruit ----- | | | 33,234 |

ATASCADERO STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|----------|----------|----------|
| Total value of farm production----- | \$72,762 | \$87,927 | \$86,823 |
| Total cost of production----- | 58,389 | 63,862 | 62,418 |
| Total Net Income----- | \$14,373 | \$24,065 | \$24,405 |
| Dairy ----- | \$18,468 | \$28,108 | \$23,384 |
| Hogs ----- | 3,075 | 337 | 673 |
| Vegetables ----- | —5,330 | —367 | 1,888 |
| Field crops ----- | —1,840 | —4,013 | —1,540 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|-------------------------------|---------|----------|---------|----------|---------|----------|
| Acres and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy ----- | 4 | 21 | 4 | 21 | 4 | 25 |
| Hogs ----- | 5 | 7 | 5 | 5 | 5 | 9 |
| Vegetables ----- | 20 | 12 | 18 | 7 | 18 | 15 |
| Field crops ----- | 181 | 8 | 71 | 6 | 71 | 7 |
| Pasture—Dairy ----- | 30 | 2 | 60 | 2 | 60 | — |
| Dry ----- | 300 | — | 300 | — | 300 | — |
| Totals ----- | 540 | 50 | 458 | 41 | 458 | 56 |
| Total patient population----- | | 1,161 | | 1,167 | | 1,400 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|---|-----------|-----------|-----------|
| Total value dairy production | \$51,192 | \$59,058 | \$57,494 |
| Total cost dairy production | 32,724 | 30,950 | 34,110 |
| Net income | \$18,468 | \$28,108 | \$23,384 |
| Cost per gallon milk produced | .46 | .37 | .39 |
| Milk production (gallons) | 71,586 | 80,700 | 88,910 |
| Average number of cows (milking and dry) .. | 60 | 63 | 66 |
| Production per cow (pounds) | 10,272 | 11,037 | 11,585 |
| Animals (June 30) | | | |
| Cows, milking and dry | 65 | 61 | 90 |
| Heifers, 2 years | 4 | 12 | 22 |
| Heifers, 1 year | 4 | 9 | 9 |
| Calves, 6 months to 1 year | 8 | 6 | — |
| Calves, under 6 months | 10 | 6 | 23 |
| Bulls, mature | 2 | 2 | 1 |
| Bulls, immature | 1 | 1 | 2 |
| Totals | 94 | 97 | 147 |
| Swine | | | |
| Total value hog production | \$12,248 | \$10,275 | \$12,093 |
| Total cost hog production | 9,172 | 9,938 | 11,420 |
| Net income | \$3,076 | \$337 | \$673 |
| Pork production | | | |
| Cost per pound | .17 | .23 | .22 |
| Liveweight | 55,397 | 43,080 | 47,310 |
| Animals (June 30) | | | |
| Fat hogs | 20 | 20 | 20 |
| Feeders | 65 | 46 | 140 |
| Pigs, suckling | 28 | 51 | 55 |
| Sows and gilts | 8 | 14 | 14 |
| Boars | 1 | 2 | 2 |
| Totals | 122 | 133 | 231 |
| Vegetables | | | |
| Total value vegetable production | \$830 | \$7,416 | \$8,609 |
| Total cost vegetable production | 6,159 | 7,783 | 6,721 |
| Net income | —\$5,329 | —\$367 | \$1,888 |
| Production | | | |
| All crops | 13 acres | 17 acres | 17 acres |
| Field Crops | | | |
| Total value crop production | \$8,493 | \$6,774 | \$8,626 |
| Total cost crop production | 10,334 | 10,787 | 10,166 |
| Net income | —\$1,841 | —\$4,013 | —\$1,540 |
| Production | | | |
| All crops | 441 acres | 431 acres | 431 acres |

CAMARILLO STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|--------------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$469,252 | \$452,709 | \$493,261 |
| Total cost of production | 297,257 | 299,183 | 315,578 |
| Total net income | \$171,995 | \$153,526 | \$177,683 |
| Dairy | \$126,650 | \$124,296 | \$154,049 |
| Orchard | 3,551 | —1,233 | —1,032 |
| Vegetables | 49,046 | 42,144 | 35,730 |
| Field crops | —7,252 | —11,681 | —11,064 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|---------------------------------|---------|----------|---------|----------|---------|----------|
| Acreage and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy | 23 | 25 | 23 | 30 | 23 | 26 |
| Orchard | 65 | 15 | 63 | 7 | 40 | 8 |
| Vegetables | 195 | 70 | 188 | 35 | 175 | 40 |
| Field crops | 555 | 25 | 435 | 23 | 542 | 12 |
| Pasture—Dairy | 40 | — | 40 | — | 40 | — |
| Dry | 133 | — | 175 | — | 175 | — |
| Miscellaneous | 637 | — | 724 | — | 653 | — |
| Totals | 1,648 | 135 | 1,648 | 95 | 1,648 | 86 |
| Total patient population | | 6,626 | | 6,673 | | 6,430 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-----------|-----------|-----------|
| Total value dairy production | \$323,003 | \$316,624 | \$359,552 |
| Total cost dairy production | 196,353 | 192,328 | 205,503 |
| Net income | \$126,650 | \$124,296 | \$154,049 |
| Cost per gallon milk produced | .45 | .44 | .44 |
| Milk production (gallons) | 434,815 | 425,227 | 445,680 |
| Average number of cows | | | |
| (milking and dry) | 300 | 314 | 323 |
| Production per cow (pounds) | 12,620 | 11,646 | 11,866 |
| Animals (June 30) | | | |
| Cows, milking and dry | 300 | 322 | 325 |
| Heifers, 2 years | 44 | 45 | 37 |
| Heifers, 1 year | 98 | 80 | 138 |
| Calves, 6 months to 1 year | 67 | 94 | 112 |
| Calves, under 6 months | 47 | 43 | 48 |
| Bulls, mature | 7 | 9 | 8 |
| Bulls, immature | 3 | 2 | 3 |
| Totals | 566 | 595 | 671 |

Fruit, Nuts and Berries

| | | | |
|------------------------------------|----------|----------|----------|
| Total value fruit production | \$6,283 | \$1,008 | \$3,124 |
| Total cost fruit production | 2,732 | 2,241 | 4,156 |
| Net income | \$3,551 | —\$1,233 | —\$1,032 |
| Production | | | |
| All varieties | 59 acres | 57 acres | 40 acres |

| Vegetables | <i>1956-57</i> | <i>1957-58</i> | <i>1958-59</i> |
|---------------------------------------|----------------|----------------|----------------|
| Total value vegetable production----- | \$84,023 | \$81,636 | \$77,440 |
| Total cost vegetable production----- | 34,977 | 39,492 | 41,710 |
| Net income ----- | \$49,046 | \$42,144 | \$35,730 |
| <i>Production</i> | | | |
| All crops ----- | 168 acres | 188 acres | 175 acres |
| Field Crops | | | |
| Total value crop production----- | \$55,943 | \$46,026 | \$53,146 |
| Total cost crop production----- | 63,195 | 57,707 | 64,210 |
| Net income ----- | —\$7,252 | —\$11,681 | —\$11,064 |
| <i>Production</i> | | | |
| All crops ----- | 512 acres | 650 acres | 757 acres |

MENDOCINO STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | <i>1956-57</i> | <i>1957-58</i> | <i>1958-59</i> |
|-------------------------------------|----------------|----------------|----------------|
| Total value of farm production----- | \$293,389 | \$293,124 | \$283,239 |
| Total cost of production----- | 251,818 | 250,218 | 231,857 |
| Total net income ----- | \$41,571 | \$42,906 | \$51,382 |
| Dairy ----- | \$22,493 | \$42,353 | \$44,556 |
| Hogs ----- | 8,036 | 6,622 | 10,329 |
| Orchard ----- | 2,890 | —1,829 | —597 |
| Vegetables ----- | 2,957 | —1,496 | —3,369 |
| Field crops ----- | —8,271 | —9,435 | —3,390 |
| Food processing ----- | --- | 6,691 | 3,853 |

| | <i>1956-57</i> | | <i>1957-58</i> | | <i>1958-59</i> | |
|--|----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Acreage and Patient Assignments | <i>Acres</i> | <i>Patients</i> | <i>Acres</i> | <i>Patients</i> | <i>Acres</i> | <i>Patients</i> |
| Dairy ----- | 8 | 12 | 8 | 10 | 8 | 12 |
| Hogs ----- | 3 | 10 | 3 | 8 | 3 | 11 |
| Orchard ----- | 20 | 4 | 20 | 2 | 20 | -- |
| Vegetables ----- | 75 | 25 | 83 | 30 | 83 | 45 |
| Field crops ----- | 410 | 8 | 489 | 15 | 489 | 11 |
| Pasture— | | | | | | |
| Dairy ----- | 35 | -- | 35 | -- | 35 | -- |
| Hogs ----- | -- | -- | 5 | -- | 5 | -- |
| Dry ----- | 138 | -- | 20 | -- | 20 | -- |
| Food processing ----- | -- | -- | -- | 9 | -- | 10 |
| Miscellaneous ----- | 526 | -- | 557 | -- | 557 | -- |
| Totals ----- | 1,215 | 59 | 1,220 | 74 | 1,220 | 89 |
| Total patient population----- | | 2,259 | | 2,271 | | 2,400 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|---|-----------|-----------|-----------|
| Total value dairy production..... | \$122,917 | \$143,012 | \$158,510 |
| Total cost dairy production..... | 100,424 | 100,659 | 113,954 |
| Net income | \$22,493 | \$42,353 | \$44,556 |
| Cost per gallon milk produced..... | .61 | .56 | .61 |
| Milk production (gallons)..... | 164,045 | 169,617 | 189,002 |
| Average number of cows (milking and dry)... | 106 | 112 | 119 |
| Production per cow (pounds)..... | 13,328 | 13,024 | 13,659 |
| Animals (June 30) | | | |
| Cows, milking and dry..... | 101 | 121 | 119 |
| Heifers, 2 years | 3 | 1 | 7 |
| Heifers, 1 year | 39 | 37 | 39 |
| Calves 6 months to 1 year..... | 21 | 16 | 22 |
| Calves, under 6 months..... | 25 | 28 | 27 |
| Bulls, mature | 5 | 5 | 6 |
| Bulls, immature | 8 | 12 | -- |
| Totals | 202 | 220 | 220 |
| Swine | | | |
| Total value hog production..... | \$32,536 | \$33,418 | \$37,045 |
| Total cost hog production..... | 24,500 | 26,796 | 26,716 |
| Net income | \$8,036 | \$6,622 | \$10,329 |
| Pork production | | | |
| Cost per pound..... | .14 | .19 | .15 |
| Liveweight | 176,294 | 143,385 | 173,699 |
| Animals (June 30) | | | |
| Fat hogs | 40 | 50 | 37 |
| Feeders | 181 | 237 | 251 |
| Pigs, weaned | 191 | 200 | 205 |
| Pigs, suckling | 60 | 235 | 318 |
| Sows and gilts..... | 50 | 50 | 52 |
| Boars | 5 | 6 | 5 |
| Totals | 527 | 778 | 868 |
| Vegetables | | | |
| Total value vegetable production..... | \$24,699 | \$20,721 | \$13,440 |
| Total cost vegetable production..... | 21,742 | 22,217 | 16,809 |
| Net income..... | \$2,957 | —\$1,496 | —\$3,369 |
| Production | | | |
| All crops | 83 acres | 83 acres | 83 acres |
| Field Crops | | | |
| Total value crop production..... | \$23,944 | \$27,192 | \$32,586 |
| Total cost crop production..... | 32,215 | 36,627 | 35,976 |
| Net income..... | —\$8,271 | —\$9,435 | —\$3,390 |
| Production | | | |
| All crops | 338 acres | 544 acres | 544 acres |

NAPA STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|--------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$536,944 | \$591,721 | \$555,641 |
| Total cost of production | 364,434 | 398,099 | 338,691 |
| Total net income | \$172,510 | \$193,622 | \$216,950 |
| Dairy | \$78,814 | \$118,079 | \$145,549 |
| Poultry | 20,590 | 26,444 | 21,265 |
| Orchard | 2,202 | 4,368 | —10,772 |
| Vegetables | 20,070 | 43,635 | 3,428 |
| Field crops | —14,151 | —8,316 | 4,351 |
| Food processing | 64,985 | 9,412 | 53,129 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|-------------------------------|---------|----------|---------|----------|---------|----------|
| Acres and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy | 32 | 25 | 32 | 25 | 45 | 28 |
| Poultry | 14 | 18 | 14 | 15 | 14 | 18 |
| Orchard | 143 | 10 | 138 | 12 | 144 | 4 |
| Vegetables | 125 | 23 | 124 | 23 | 125 | 25 |
| Field crops | 194 | 3 | 279 | 3 | 261 | 18 |
| Pasture | 332 | — | 332 | — | 332 | — |
| Food processing | — | — | — | — | — | 25 |
| Miscellaneous | 1,151 | — | 1,072 | — | 1,070 | — |
| Totals | 1,991 | 79 | 1,991 | 78 | 1,991 | 118 |
| Total patient population | 5,408 | | 5,569 | | 5,300 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|--|-----------|-----------|-----------|
| Total value dairy production | \$242,496 | \$279,758 | \$321,990 |
| Total cost dairy production | 163,682 | 161,679 | 176,441 |
| Net income | \$78,814 | \$118,079 | \$145,549 |
| Cost per gallon milk produced | .48 | .44 | .45 |
| Milk production (gallons) | 341,449 | 353,101 | 371,655 |
| Average number of cows (milking and dry) | 226 | 242 | 246 |
| Production per cow (pounds) | 13,010 | 12,547 | 13,063 |
| Animals (June 30) | | | |
| Cows, milking and dry | 233 | 256 | 253 |
| Heifers, 2 years | 32 | 26 | — |
| Heifers, 1 year | 56 | 63 | 41 |
| Calves, 6 months to 1 year | 12 | 19 | 54 |
| Calves, under 6 months | 41 | 70 | — |
| Bulls, mature | 8 | 5 | 6 |
| Bulls, immature | — | 8 | 8 |
| Totals | 382 | 447 | 362 |

| Poultry | 1956-57 | 1957-58 | 1958-59 |
|---------------------------------------|-----------|-----------|-----------|
| Total value poultry production----- | \$63,792 | \$74,619 | \$72,388 |
| Total cost poultry production----- | 43,202 | 48,175 | 51,123 |
| Net income ----- | \$20,590 | \$26,444 | \$21,265 |
| Cost per dozen eggs----- | .26 | .32 | .35 |
| Total egg production (dozen)----- | 116,340 | 150,870 | 146,310 |
| Average number laying hens----- | 6,935 | 8,971 | 7,743 |
| Eggs per hen----- | 201 | 202 | 227 |
| Birds (June 30) | | | |
| Laying hens----- | 6,665 | 8,612 | 6,718 |
| Other chickens----- | 4,850 | 2,476 | 4,767 |
| Turkeys----- | 750 | 736 | 676 |
| Totals ----- | 12,265 | 11,824 | 12,161 |
| Fruit, Nuts and Berries | | | |
| Total value fruit production----- | \$28,886 | \$26,864 | \$11,312 |
| Total cost fruit production----- | 26,684 | 22,496 | 22,084 |
| Net income ----- | \$2,202 | \$4,368 | —\$10,772 |
| <i>Production</i> | | | |
| All varieties ----- | 143 acres | 137 acres | 144 acres |
| Field Crops | | | |
| Total value crop production----- | \$9,787 | \$20,045 | \$18,302 |
| Total cost crop production----- | 23,939 | 28,361 | 13,951 |
| Net income ----- | —\$14,152 | —\$8,316 | \$4,351 |
| <i>Production</i> | | | |
| All crops ----- | 611 acres | 611 acres | 611 acres |
| Vegetables | | | |
| Total value vegetable production----- | \$48,587 | \$73,458 | \$38,727 |
| Total cost vegetable production----- | 28,517 | 29,823 | 35,299 |
| Net income ----- | \$20,070 | \$43,635 | \$3,428 |
| <i>Production</i> | | | |
| All crops ----- | 124 acres | 124 acres | 124 acres |
| Food Processing | | | |
| Total value production----- | — | — | \$92,922 |
| Total cost production----- | — | — | 39,793 |
| Net income ----- | — | — | \$53,129 |
| <i>Production</i> | | | #10 Cans |
| Vegetables ----- | — | — | 81,296 |
| Fruit ----- | — | — | 57,443 |

PATTON STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-----------|-----------|-----------|
| Total value of farm production----- | \$472,400 | \$473,521 | \$438,329 |
| Total cost of production----- | 357,868 | 350,518 | 324,627 |
| Total net income----- | \$114,532 | \$123,003 | \$113,702 |
| Dairy ----- | \$52,970 | \$69,354 | \$81,723 |
| Hogs ----- | 19,116 | 35,856 | 27,294 |
| Poultry ----- | 9,788 | 9,349 | 7,442 |
| Orchard ----- | 12,399 | 1,576 | 7,164 |
| Vegetables ----- | 7,494 | 9,285 | 9,048 |
| Field crops ----- | -7,397 | -13,702 | -29,991 |
| Food processing ----- | 20,162 | 11,285 | 11,022 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|-------------------------------|---------|----------|---------|----------|---------|----------|
| Acres and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy ----- | 16 | 16 | 16 | 15 | 16 | 21 |
| Hogs ----- | 5 | 15 | 5 | 10 | 5 | 14 |
| Poultry ----- | 6 | 12 | 6 | 10 | 6 | 8 |
| Orchard ----- | 36 | - | 36 | 5 | 36 | 5 |
| Vegetables ----- | 158 | 30 | 116 | 20 | 116 | 30 |
| Field crops ----- | 189 | 20 | 223 | 20 | 223 | 25 |
| Pasture—dairy ----- | 13 | - | 13 | - | 13 | - |
| Food processing ----- | - | 11 | - | 48 | - | 50 |
| Miscellaneous ----- | 246 | - | 254 | - | 254 | - |
| Totals ----- | 669 | 104 | 669 | 128 | 669 | 153 |
| Total patient population----- | 4,242 | | 4,325 | | 4,551 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|------------------------------------|-----------|-----------|-----------|
| Total value dairy production----- | \$194,598 | \$208,148 | \$239,478 |
| Total cost dairy production----- | 141,628 | 138,794 | 157,755 |
| Net income ----- | \$52,970 | \$69,354 | \$81,723 |
| Cost per gallon milk produced----- | .48 | .45 | .49 |
| Milk production (gallons)----- | 292,535 | 293,970 | 324,690 |
| Average number of cows | | | |
| (Milking and dry) ----- | 188 | 196 | 220 |
| Production per cow (pounds) ----- | 13,397 | 12,899 | 12,693 |
| Animals (June 30) | | | |
| Cows, milking and dry----- | 185 | 211 | 225 |
| Heifers, 1 year ----- | 37 | 52 | - |
| Calves, 6 months to 1 year----- | 72 | 53 | 52 |
| Calves, under 6 months----- | 26 | 113 | 130 |
| Bulls, mature ----- | 4 | 7 | 4 |
| Bulls, immature ----- | 3 | 1 | 1 |
| Totals ----- | 327 | 437 | 412 |

| Swine | <i>1956-57</i> | <i>1957-58</i> | <i>1958-59</i> |
|--|----------------|----------------|----------------|
| Total value hog production----- | \$45,095 | \$52,724 | \$44,595 |
| Total cost hog production----- | 25,979 | 16,868 | 17,301 |
| Net income ----- | \$19,116 | \$35,856 | \$27,294 |
| Pork production | | | |
| Cost per pound ----- | .08 | .07 | .08 |
| Liveweight ----- | 229,657 | 236,585 | 260,178 |
| Animals (June 30) | | | |
| Fat hogs ----- | 79 | 129 | 146 |
| Feeders ----- | 235 | 338 | 232 |
| Pigs, weaned ----- | 68 | 95 | 89 |
| Pigs, suckling ----- | 240 | 251 | 205 |
| Sows and gilts ----- | 110 | 88 | 66 |
| Boars ----- | 6 | 6 | 6 |
| Totals ----- | 738 | 907 | 744 |
| Poultry (closed out as of July 1) | | | |
| Total value poultry production----- | \$49,311 | \$45,305 | \$42,835 |
| Total cost poultry production ----- | 39,523 | 35,956 | 35,393 |
| Net income ----- | \$9,788 | \$9,349 | \$7,442 |
| Cost per dozen eggs----- | .40 | .34 | .30 |
| Total egg production (dozen) ----- | 99,225 | 105,570 | 116,685 |
| Average number laying hens ----- | 6,687 | 6,611 | 7,910 |
| Eggs per hen ----- | 178 | 192 | 177 |
| Fruit, Nuts and Berries | | | |
| Total value fruit production----- | \$21,779 | \$12,132 | \$11,236 |
| Total cost fruit production ----- | 9,380 | 10,556 | 4,072 |
| Net income ----- | \$12,399 | \$1,576 | \$7,164 |
| <i>Production</i> | | | |
| All varieties ----- | 36 Acres | 36 Acres | 36 Acres |
| Vegetables | | | |
| Total value vegetable production----- | \$58,403 | \$46,514 | \$53,312 |
| Total cost vegetable production ----- | 53,288 | 37,230 | 44,264 |
| Net income ----- | \$5,115 | \$9,284 | \$9,048 |
| <i>Production</i> | | | |
| All crops ----- | 160 Acres | 117 Acres | 117 Acres |
| Field Crops | | | |
| Total value crop production ----- | \$25,949 | \$34,550 | \$16,361 |
| Total cost crop production----- | 30,966 | 48,252 | 46,352 |
| Net income ----- | —\$5,017 | \$13,702 | —\$29,991 |
| <i>Production</i> | | | |
| All crops ----- | 179 Acres | 236 Acres | 236 Acres |

SONOMA STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|--------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$256,192 | \$306,180 | \$312,479 |
| Total cost of production | 215,316 | 224,303 | 237,382 |
| Total net income | \$40,876 | \$81,877 | \$75,097 |
| Dairy | \$30,343 | \$71,417 | \$85,436 |
| Hogs | 2,683 | 18,060 | 13,118 |
| Poultry | 11,114 | 5,668 | 1,966 |
| Orchard | —4,255 | —10,228 | —23,465 |
| Food processing | 991 | —3,040 | —1,958 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|-------------------------------|---------|----------|---------|----------|---------|----------|
| Acres and Patient Assignments | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy | 10 | 22 | 18 | 21 | 18 | 19 |
| Hogs | 3 | 3 | 6 | 5 | 6 | 4 |
| Poultry | 11 | 15 | 13 | 12 | 13 | 11 |
| Orchard | 89 | 10 | 86 | 11 | 86 | 7 |
| Pasture— | | | | | | |
| Dairy | 35 | -- | 35 | -- | 35 | -- |
| Dry | 628 | -- | 628 | -- | 628 | -- |
| Miscellaneous | 894 | -- | 884 | -- | 884 | -- |
| Totals | 1,670 | 50 | 1,670 | 49 | 1,670 | 41 |
| Total patient population | | 3,174 | | 3,202 | | 3,850 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|--|-----------|-----------|-----------|
| Total value dairy production | \$148,858 | \$204,526 | \$227,113 |
| Total cost dairy production | 118,515 | 133,109 | 141,677 |
| Net income | \$30,343 | \$71,417 | \$85,436 |
| Cost per gallon milk produced | .55 | .48 | .48 |
| Milk production (gallons) | 216,200 | 259,375 | 288,166 |
| Average number of cows (milking and dry) | 136 | 151 | 164 |
| Production per cow (pounds) | 13,760 | 14,775 | 15,111 |
| Animals (June 30) | | | |
| Cows, milking and dry | 135 | 168 | 168 |
| Heifers, 2 years | 18 | 13 | 14 |
| Heifers, 1 year | 43 | 38 | 60 |
| Calves, 6 months to 1 year | 16 | 30 | 29 |
| Calves, milk-fed under 6 months | 27 | 34 | 34 |
| Bulls, mature | 3 | 1 | 3 |
| Bulls, immature | 1 | 4 | 3 |
| Total | 243 | 288 | 311 |

| Swine | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|----------|-----------|-----------|
| Total value hog production----- | \$20,876 | \$35,725 | \$34,637 |
| Total cost hog production----- | 18,193 | 17,665 | 21,519 |
| Net income ----- | \$2,683 | \$18,060 | \$13,118 |
| Pork production | | | |
| Cost per pound----- | .15 | .15 | .17 |
| Liveweight ----- | 121,548 | 118,990 | 134,835 |
| Animals (June 30) | | | |
| Fat hogs ----- | 32 | 24 | 32 |
| Feeders ----- | 211 | 223 | 184 |
| Pigs, weaned ----- | 25 | 64 | 55 |
| Pigs, suckling ----- | 45 | 48 | 68 |
| Sows and gilts----- | 34 | 37 | 33 |
| Boars ----- | 3 | 3 | 3 |
| Totals ----- | 350 | 399 | 375 |
| Poultry | | | |
| Total value poultry production----- | \$45,142 | \$43,112 | \$38,301 |
| Total cost poultry production----- | 36,865 | 37,444 | 36,335 |
| Net income ----- | \$8,277 | \$5,668 | \$1,966 |
| Cost per dozen eggs----- | .39 | .40 | .45 |
| Total egg production (dozen)----- | 94,290 | 93,828 | 85,567 |
| Average number laying hens----- | 4,382 | 4,759 | 4,532 |
| Eggs per hen----- | 258 | 237 | 227 |
| Birds (June 30) | | | |
| Laying hens ----- | 4,382 | 3,838 | 4,390 |
| Other chickens ----- | 997 | 3,790 | 2,909 |
| Turkeys ----- | 313 | 322 | 219 |
| Total ----- | 5,692 | 7,950 | 7,518 |
| Fruit, Nuts and Berries | | | |
| Total value fruit production----- | \$15,804 | \$10,152 | \$7,582 |
| Total cost fruit production----- | 20,059 | 20,380 | 31,047 |
| Net income ----- | —\$4,255 | —\$10,228 | —\$23,465 |
| Production | | | |
| All varieties ----- | 89 acres | 86 acres | 86 acres |

STOCKTON STATE HOSPITAL

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-----------|-----------|-----------|
| Total value of farm production----- | \$522,717 | \$605,723 | \$342,956 |
| Total cost of production----- | 340,458 | 430,842 | 319,448 |
| Total net income----- | \$182,259 | \$174,881 | \$23,508 |
| Dairy ----- | \$114,697 | \$76,265 | \$10,217 |
| Vegetables ----- | 51,112 | 38,586 | 26,871 |
| Field crops ----- | —10,670 | —32,986 | —25,946 |
| Food processing ----- | 17,442 | 25,693 | 12,366 |

| Acreage and Patient Assignments | 1956-57 | | 1957-58 | | 1958-59 | |
|---------------------------------|---------|----------|---------|----------|---------|----------|
| | Acres | Patients | Acres | Patients | Acres | Patients |
| Dairy ----- | 50 | 44 | 50 | 44 | 50 | 35 |
| Vegetables ----- | 95 | 30 | 143 | 30 | 143 | 15 |
| Field crops ----- | 700 | 20 | 808 | 20 | 808 | 25 |
| Pasture | | | | | | |
| Dairy ----- | 55 | -- | 55 | -- | 55 | -- |
| Dry ----- | 26 | -- | 26 | -- | 26 | -- |
| Food processing ----- | -- | -- | -- | -- | -- | 45 |
| Miscellaneous ----- | 234 | -- | 138 | 49 | 175 | -- |
| Totals ----- | 1,257 | 125 | 1,257 | 166 | 1,257 | 120 |
| Total patient population ----- | | 4,428 | | 4,292 | | 3,900 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|---|-----------|-----------|-----------|
| Total value dairy production ----- | \$296,385 | \$263,416 | \$201,277 |
| Total cost dairy production ----- | 181,688 | 187,151 | 191,060 |
| Net income ----- | \$114,697 | \$76,265 | \$10,217 |
| Cost per gallon milk produced ----- | .57 | .55 | -- |
| Milk production (gallons) ----- | 317,099 | 325,110 | 257,146 |
| Average number of cows (milking and dry) -- | 236 | 236 | 234 |
| Production per cow (pounds) ----- | 11,573 | 11,847 | -- |
| Animals (June 30) | | | |
| Cows, milking and dry ----- | 225 | 238 | Closed |
| Heifers, 2 years ----- | 6 | 38 | out |
| Heifers, 1 year ----- | 26 | 29 | |
| Calves, 6 months to 1 year ----- | 69 | 54 | |
| Calves, under 6 months ----- | 97 | 72 | |
| Bulls, mature ----- | 7 | 7 | |
| Bulls, immature ----- | 3 | 2 | |
| Totals ----- | 433 | 440 | |
| Vegetables | | | |
| Total value vegetable production ----- | \$82,384 | \$67,464 | \$49,221 |
| Total cost vegetable production ----- | 31,272 | 28,878 | 22,350 |
| Net income ----- | \$51,112 | \$38,586 | \$26,871 |
| Production | | | |
| All crops ----- | 115 acres | 143 acres | 143 acres |
| Field Crops | | | |
| Total value crop production ----- | \$69,387 | \$70,282 | \$63,454 |
| Total cost crop production ----- | 80,057 | 103,268 | 89,400 |
| Net income ----- | —\$10,670 | —\$32,986 | —\$25,946 |
| Production | | | |
| All crops ----- | 908 acres | 730 acres | 908 acres |
| Food Processing | | | |
| Total value of production ----- | -- | -- | \$29,004 |
| Total cost of production ----- | -- | -- | 16,638 |
| Net income ----- | -- | -- | \$12,366 |
| Production | | | #10 cans |
| Vegetables ----- | -- | -- | 30,140 |
| Fruit ----- | -- | -- | 8,897 |

PRESTON SCHOOL OF INDUSTRY

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-----------|-----------|-----------|
| Total value of farm production----- | \$152,032 | \$155,483 | \$182,032 |
| Total cost of production----- | 131,682 | 127,233 | 137,501 |
| Total net income----- | \$20,350 | \$28,250 | \$44,531 |
| Dairy ----- | \$19,850 | \$22,199 | \$32,352 |
| Hogs ----- | —398 | 4,403 | 3,408 |
| Poultry ----- | 1,751 | —2,507 | —468 |
| Beef and sheep----- | -- | 1,620 | 3,723 |
| Vegetables ----- | 1,744 | 3,151 | 2,851 |
| Field crops ----- | —1,484 | —892 | 2,701 |

| | 1956-57 | | 1957-58 | | 1958-59 | |
|------------------------------|---------|-------|---------|-------|---------|-------|
| Acreage and Ward Assignments | Acres | Wards | Acres | Wards | Acres | Wards |
| Dairy ----- | 36 | 17 | 36 | 17 | 36 | 17 |
| Hogs ----- | 12 | 7 | 12 | 7 | 12 | 7 |
| Poultry ----- | 2 | 10 | 2 | 10 | 2 | 10 |
| Vegetables ----- | 40 | 15 | 40 | 15 | 40 | 15 |
| Field crops ----- | 232 | 36 | 232 | 35 | 232 | 37 |
| Pasture— | | | | | | |
| Dairy ----- | 54 | -- | 54 | -- | 54 | -- |
| Hogs ----- | 13 | -- | 13 | -- | 13 | -- |
| Beef ----- | 50 | -- | 79 | -- | 79 | -- |
| Dry pasture ----- | 323 | -- | 323 | -- | 323 | -- |
| Miscellaneous ----- | 269 | 5 | 240 | -- | 240 | -- |
| Totals ----- | 1,031 | 90 | 1,031 | 84 | 1,031 | 86 |
| Total ward population----- | | 690 | | 701 | | 756 |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958-59 |
|---|----------|----------|----------|
| Total value dairy production----- | \$69,614 | \$79,401 | \$95,539 |
| Total cost dairy production----- | 49,764 | 57,202 | 63,187 |
| Net income ----- | \$19,850 | \$22,199 | \$32,352 |
| Cost per gallon milk produced----- | .55 | .56 | .52 |
| Milk production (gallons)----- | 91,176 | 102,066 | 121,653 |
| Average number of cows (milking and dry) -- | 92 | 96 | 109 |
| Production per cow (pounds)----- | 8,563 | 9,143 | 9,598 |
| Animals (June 30) | | | |
| Cows, milking and dry----- | 98 | 104 | 112 |
| Heifers, 2 years ----- | 7 | 9 | 2 |
| Heifers, 1 year----- | 36 | 36 | 27 |
| Calves, 6 months to 1 year----- | 24 | 15 | 24 |
| Calves, under 6 months----- | 43 | 30 | 34 |
| Bulls ----- | 2 | 2 | 2 |
| Totals ----- | 210 | 196 | 201 |

| Swine | 1956-57 | 1957-58 | 1958-59 |
|---------------------------------------|-----------|-----------|-----------|
| Total value hog production----- | \$14,270 | \$18,151 | \$23,078 |
| Total cost hog production----- | 14,668 | 13,748 | 19,670 |
| Net income ----- | —\$398 | \$4,403 | \$3,408 |
| Pork production | | | |
| Cost per pound----- | -- | .16 | .20 |
| Liveweight ----- | 65,200 | 86,170 | 92,884 |
| Animals (June 30) | | | |
| Fat hogs ----- | 23 | 32 | 25 |
| Feeders ----- | 117 | 80 | 130 |
| Pigs, weaned ----- | 87 | 51 | 52 |
| Pigs, suckling ----- | 42 | 80 | 75 |
| Sows and gilts----- | 26 | 34 | 31 |
| Boars ----- | 3 | 4 | 3 |
| Totals ----- | 298 | 281 | 316 |
| Poultry | | | |
| Total value poultry production----- | \$21,225 | \$19,985 | \$20,199 |
| Total cost poultry production----- | 22,986 | 22,491 | 20,667 |
| Net income ----- | —\$1,761 | —\$2,506 | —\$468 |
| Cost per dozen eggs----- | .43 | .49 | .42 |
| Total egg production, dozen----- | 51,921 | 45,690 | 50,555 |
| Average number laying hens----- | 3,228 | 2,850 | 2,854 |
| Eggs per hen----- | 193 | 160 | 213 |
| Birds (June 30) | | | |
| Laying hens ----- | 2,973 | 2,035 | 3,341 |
| Pullets, 3 to 6 months----- | 1,867 | 958 | 578 |
| Pullets, under 3 months----- | -- | 500 | 601 |
| Totals ----- | 4,840 | 3,493 | 4,520 |
| Beef and Sheep | | | |
| Total value production----- | -- | \$3,857 | \$6,559 |
| Total cost production----- | -- | 2,237 | 2,836 |
| Net income ----- | -- | \$1,620 | \$3,723 |
| Vegetables | | | |
| Total value vegetable production----- | \$12,216 | \$14,431 | \$14,062 |
| Total cost vegetable production----- | 10,472 | 11,281 | 11,211 |
| Net income ----- | \$1,744 | \$3,150 | \$2,851 |
| Production | | | |
| All crops ----- | 40 acres | 40 acres | 40 acres |
| Field Crops | | | |
| Total value crop production----- | \$14,499 | \$19,340 | \$21,735 |
| Total cost crop production----- | 15,983 | 20,232 | 19,034 |
| Net income ----- | —\$1,484 | —\$892 | \$2,701 |
| Production | | | |
| All crops ----- | 598 acres | 598 acres | 598 acres |

PASO ROBLES SCHOOL FOR BOYS

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|----------|----------|----------|
| Total value of farm production----- | \$13,948 | \$14,712 | \$16,147 |
| Total cost of production----- | 10,213 | 10,120 | 11,266 |
| Total net income----- | \$3,735 | \$4,592 | \$4,881 |
| Hogs ----- | —\$584 | \$3,185 | \$5,327 |
| Poultry ----- | 1,543 | 958 | 419 |
| Vegetables ----- | 1,620 | 453 | 84 |
| Field crops ----- | 1,349 | —4 | —949 |

| | 1956-57 | | 1957-58 | | 1958-1959 | |
|------------------------------|---------|-------|---------|-------|-----------|-------|
| Acreage and Ward Assignments | Acres | Wards | Acres | Wards | Acres | Wards |
| Hogs ----- | 1 | -- | 1 | -- | 1 | 8 |
| Poultry ----- | 2 | -- | 2 | -- | 2 | 6 |
| Vegetables ----- | 3 | -- | 3 | -- | 3 | 16 |
| Field crops ----- | 85 | -- | 85 | -- | 85 | -- |
| Pasture, hogs ----- | 2 | -- | 2 | -- | 2 | -- |
| Miscellaneous ----- | 112 | -- | 112 | -- | 112 | -- |
| Totals ----- | 205 | 30* | 205 | 30* | 205 | 30 |
| Total ward population----- | | 347 | | 349 | | 437 |

ENTERPRISE SUMMARIES

| Swine | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|---------|---------|---------|
| Total value hog production----- | \$3,962 | \$6,927 | \$7,619 |
| Total cost hog production----- | 4,546 | 3,742 | 2,292 |
| Net income ----- | —\$584 | \$3,185 | \$5,327 |
| Pork production | | | |
| Cost per pound----- | .18 | .11 | .09 |
| Liveweight ----- | 25,668 | 32,694 | 40,063 |
| Animals (June 30) | | | |
| Fat hogs ----- | 5 | 12 | 19 |
| Feeders ----- | 30 | 42 | 19 |
| Totals ----- | 35 | 54 | 38 |
| Poultry | | | |
| Total value poultry production----- | \$6,254 | \$5,986 | \$5,609 |
| Total cost poultry production----- | 4,711 | 5,028 | 5,190 |
| Net income ----- | \$1,543 | \$958 | \$419 |
| Cost per dozen eggs----- | .39 | .41 | .42 |
| Total egg production, dozen----- | 10,153 | 12,150 | 12,720 |
| Average number laying hens----- | 497 | 664 | 750 |
| Eggs per hen----- | 245 | 220 | 204 |
| Birds (June 30) | | | |
| Laying hens ----- | 620 | 688 | 753 |
| Other chickens ----- | 239 | 196 | 190 |
| Turkeys ----- | 50 | 73 | -- |
| Totals ----- | 909 | 957 | 943 |

* Inmates assigned to all phases.

| Vegetables | 1956-57 | 1957-58 | 1958-59 |
|---------------------------------------|----------|----------|----------|
| Total value vegetable production----- | \$1,734 | \$640 | \$1,292 |
| Total cost vegetable production----- | 114 | 187 | 1,208 |
| Net income ----- | \$1,620 | \$453 | \$84 |
| <i>Production</i> | | | |
| All crops ----- | 3 acres | 3 acres | 3 acres |
| Field Crops | | | |
| Total value crop production----- | -- | \$1,159 | \$1,627 |
| Total cost crop production----- | -- | 1,163 | 2,576 |
| Net income ----- | -- | —\$4 | \$949 |
| <i>Production</i> | | | |
| All crops ----- | 59 acres | 59 acres | 59 acres |

FRED C. NELLES SCHOOL FOR BOYS

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958-59 |
|-------------------------------------|-------------|-------------|-------------|
| Total value of farm production----- | \$15,187 | \$4,528 | \$5,283 |
| Total cost of production----- | 20,682 | —7,904 | —8,794 |
| Total net income----- | —\$5,495 | —\$3,376 | —\$3,511 |
| Vegetables ----- | —\$5,495 | —\$3,376 | —\$1,564 |
| Orchard ----- | -- | -- | —1,947 |
| Acreage and Ward Assignments | 1956-57 | 1957-58 | 1958-1959 |
| | Acres Wards | Acres Wards | Acres Wards |
| Vegetables ----- | 25 8 | 25 10 | 25 10 |
| Miscellaneous ----- | 79 4 | 79 -- | 79 -- |
| Totals ----- | 104 12 | 104 10 | 104 10 |
| Total ward population----- | 315 | 317 | 311 |

ENTERPRISE SUMMARY

| Vegetables | 1956-57 | 1957-58 | 1958-59 |
|---------------------------------------|----------|----------|-----------------|
| Total value vegetable production----- | \$4,316 | \$4,528 | \$3,166 |
| Total cost vegetable production----- | 8,337 | —7,904 | 4,730 |
| Net income ----- | —\$4,021 | —\$3,376 | —\$1,564 |
| <i>Production</i> | | | |
| All crops ----- | 25 acres | 25 acres | 25 acres |
| Orchard | | | |
| Total value fruit production----- | -- | -- | \$206 |
| Total cost fruit production----- | -- | -- | 2,153 |
| Net income ----- | -- | -- | —\$1,947 |
| <i>Production</i> | | | |
| All varieties ----- | | | acres—scattered |

INSTITUTION FOR MEN

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958 |
|-------------------------------------|-----------|-----------|-----------|
| Total value of farm production----- | \$399,982 | \$609,214 | \$687,527 |
| Total cost of production----- | 295,008 | 441,442 | 548,583 |
| Total net income----- | \$104,974 | \$167,772 | \$138,944 |
| Dairy ----- | \$80,758 | \$118,321 | \$123,546 |
| Hogs ----- | 13,970 | 31,694 | 17,580 |
| Beef ----- | -- | 19,174 | 16,421 |
| Orchard ----- | 1,911 | 2,897 | 2,667 |
| Vegetables ----- | 16,939 | 11,296 | —19,715 |
| Field crops ----- | 27,002 | —15,610 | —1,555 |
| Food processing ----- | -- | 44,411 | 67,816 |

| Acreage and Inmate Assignments | 1956-57 | | 1957-58 | | 1958 | |
|--------------------------------|---------|---------|---------|---------|-------|---------|
| | Acres | Inmates | Acres | Inmates | Acres | Inmates |
| Dairy and beef----- | 10 | 25 | 31 | 38 | 31 | 40 |
| Hogs ----- | 25 | 15 | 25 | 15 | 25 | 16 |
| Orchard ----- | 65 | 2 | 40 | 2 | 40 | 2 |
| Vegetables ----- | 267 | 18 | 331 | 14 | 331 | 12 |
| Field crops ----- | 1,274 | 16 | 1,320 | 18 | 1,320 | 12 |
| Pasture ----- | 465 | -- | 445 | -- | 445 | -- |
| Food processing ----- | -- | -- | -- | 77 | -- | 37 |
| Miscellaneous ----- | 181 | 54 | 95 | 50 | 95 | 31 |
| Totals ----- | 2,287 | 130 | 2,287 | 214 | 2,287 | 150 |
| Total inmate population----- | 2,075 | | 2,217 | | 1,965 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958 |
|---|-----------|-----------|------------|
| Total value dairy production----- | \$212,816 | \$357,568 | \$468,315 |
| Total cost dairy production----- | 132,058 | 239,247 | 344,769 |
| Net income ----- | \$80,758 | \$118,321 | \$123,546 |
| Cost per gallon milk produced----- | .38 | .47 | .54 |
| Milk production (gallons)----- | 351,956 | 507,333 | 637,471 |
| Average number of cows (milking and dry) -- | 266 | 349 | 434 |
| Production per cow (pounds)----- | 11,392 | 12,501 | 12,902 |
| Animals (June 30) | | | (12/31/58) |
| Cows, milking and dry----- | 259 | 418 | 453 |
| Heifers, 2 years----- | -- | 124 | 153 |
| Heifers, 1 year----- | 81 | 122 | 128 |
| Calves, 6 months to 1 year----- | 167 | 137 | 186 |
| Calves, under 6 months----- | 87 | 104 | 96 |
| Bulls, mature ----- | 14 | 16 | 13 |
| Bulls, immature ----- | -- | 10 | 16 |
| Totals ----- | 608 | 931 | 1,045 |

| Swine | 1956-57 | 1957-58 | 1958 |
|---------------------------------------|-------------|-------------|-------------|
| Total value hog production----- | \$84,293 | \$123,328 | \$94,407 |
| Total cost hog production----- | 79,268 | 91,634 | 76,827 |
| Net income ----- | \$5,025 | \$31,694 | \$17,580 |
| Pork production | | | |
| Cost per pound----- | -- | .18 | .17 |
| Liveweight ----- | -- | 307,286 | 371,216 |
| Animals (June 30) | | | (12/31/58) |
| Fat hogs ----- | 59 | 86 | 55 |
| Feeders ----- | 319 | 306 | 389 |
| Pigs, weaned ----- | 603 | 753 | 849 |
| Pigs, suckling ----- | 293 | 442 | 295 |
| Sows and gilts----- | 153 | 202 | 173 |
| Boars ----- | 9 | 14 | 12 |
| Totals ----- | 1,436 | 1,803 | 1,773 |
| Beef | | | |
| Total value beef production----- | -- | \$32,358 | \$27,897 |
| Total cost beef production----- | -- | 13,184 | 11,476 |
| Net income ----- | -- | \$19,174 | \$16,421 |
| Animals (June 30) | | | (12/31/58) |
| Steers ----- | -- | 246 | 287 |
| Vegetables | | | |
| Total value vegetable production----- | \$74,396 | \$63,090 | \$38,823 |
| Total cost vegetable production----- | 57,457 | 51,794 | 58,538 |
| Net income ----- | \$16,939 | \$11,296 | —\$19,715 |
| Production | | | |
| All crops ----- | 351 acres | 351 acres | 351 acres |
| Field Crops | | | |
| Total value crop production----- | \$87,116 | \$27,468 | \$52,866 |
| Total cost crop production----- | 60,114 | 43,078 | 54,422 |
| Net income ----- | \$27,002 | —\$15,610 | —\$1,556 |
| Production | | | |
| All crops ----- | 2,443 acres | 1,920 acres | 1,920 acres |
| Fruit, Nuts and Berries | | | |
| Total value fruit production----- | \$4,334 | \$5,402 | \$5,219 |
| Total cost fruit production----- | 2,423 | 2,505 | 2,552 |
| Net income ----- | \$1,911 | \$2,897 | \$2,667 |
| Production | | | |
| Peaches ----- | 40 acres | 40 acres | 40 acres |
| Food Processing | | | |
| Credit for finished goods----- | -- | \$304,402 | \$329,177 |
| Cost of finished goods----- | -- | -- | 261,361 |
| Net income ----- | -- | -- | \$67,816 |
| Production | | #10 cans | #10 cans |
| Vegetables ----- | -- | 527,448 | 591,798 |
| Syrup ----- | -- | 31,626 | 46,923 |

DEUEL VOCATIONAL INSTITUTION

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958 |
|--------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$114,712 | \$200,435 | \$179,083 |
| Total cost of production | 120,440 | 151,922 | 159,028 |
| Total net income | —\$5,728 | \$48,513 | \$20,055 |
| Dairy | \$4,546 | \$29,653 | \$20,751 |
| Hogs | 2,628 | 43,196 | 21,009 |
| Field crops | —6,534 | —24,336 | —21,705 |

| | 1956-57 | | 1957-58 | | 1958 | |
|------------------------------|---------|---------|---------|---------|-------|---------|
| Acres and Inmate Assignments | Acres | Inmates | Acres | Inmates | Acres | Inmates |
| Dairy | 5 | 12 | 5 | 14 | 10 | 9 |
| Hogs | 17 | 6 | 20 | 7 | 20 | 5 |
| Field crops | 451 | 10 | 189 | 10 | 239 | 10 |
| Pasture—Dairy | 110 | — | 176 | — | 149 | — |
| Miscellaneous | 198 | 4 | 391 | 4 | 363 | 6 |
| Totals | 781 | 32 | 781 | 35 | 781 | 30 |
| Total inmate population | 1,246 | | 1,234 | | 1,355 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958 |
|--|----------|-----------|------------|
| Total value dairy production | \$75,357 | \$100,705 | \$102,654 |
| Total cost dairy production | 70,811 | 71,082 | 81,903 |
| Net income | \$4,546 | \$29,623 | \$20,751 |
| Cost per gallon milk produced | .55 | .52 | .57 |
| Milk production (gallons) | 129,194 | 137,264 | 135,414 |
| Average number of cows (milking and dry) | 94 | 100 | 103 |
| Production per cow (pounds) | 11,834 | 11,805 | 11,306 |
| Animals (June 30) | | | (12/31/58) |
| Cows, milking and dry | 99 | 105 | 106 |
| Heifers, 2 years | 26 | 37 | 45 |
| Heifers, 1 year | — | 35 | 36 |
| Calves, 6 months to 1 year | 34 | 24 | 23 |
| Calves, milk fed, under 6 months | 42 | 15 | 8 |
| Bulls, mature | 1 | 1 | 1 |
| Totals | 202 | 217 | 219 |

Swine

| | | | |
|----------------------------|----------|----------|------------|
| Total value hog production | \$34,356 | \$89,591 | \$66,325 |
| Total cost hog production | 31,727 | 46,395 | 45,316 |
| Net income | \$2,629 | \$43,196 | \$21,009 |
| Pork production | | | |
| Cost per pound | — | .19 | .16 |
| Liveweight | — | 215,065 | 272,847 |
| Animals (June 30) | | | (12/31/58) |
| Fat hogs | 119 | 133 | 130 |
| Feeders | 158 | 392 | 252 |
| Pigs, weaned | 194 | 116 | 151 |
| Pigs, suckling | 143 | 115 | 138 |
| Sows and gilts | 82 | 94 | 86 |
| Boars | 3 | 3 | 4 |
| Totals | 699 | 853 | 761 |

| Field Crops | 1956-57 | 1957-58 | 1958 |
|-----------------------------------|-----------|-----------|-----------|
| Total value crop production | \$11,436 | \$10,139 | \$10,104 |
| Total cost crop production | 17,971 | 34,475 | 31,809 |
| Net income | —\$6,535 | —\$24,336 | —\$21,705 |
| <i>Production</i> | | | |
| All crops | 400 acres | 365 acres | 438 acres |

FOLSOM STATE PRISON

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958 |
|--------------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$194,273 | \$196,827 | \$156,164 |
| Total cost of production | 203,123 | 179,127 | 149,423 |
| Total net income | —\$8,850 | \$17,700 | \$6,741 |
| Dairy | \$11,210 | \$17,883 | \$13,999 |
| Hogs | —11,550 | 1,428 | 146 |
| Poultry | —7,499 | —3,552 | —4,025 |
| Field crops | -- | 1,941 | -- |
| Food processing | -- | (7,431) | (—4,049) |

| | 1956-57 | | 1957-58 | | 1958 | |
|--------------------------------|---------|---------|---------|---------|-------|---------|
| Acreage and Inmate Assignments | Acres | Inmates | Acres | Inmates | Acres | Inmates |
| Dairy | 25 | 15 | 25 | 16 | 25 | 29 |
| Hogs | 37 | 8 | 37 | 7 | 37 | 3 |
| Poultry | 12 | 8 | 12 | 6 | 12 | 4 |
| <i>Field Crops</i> | | | | | | |
| Irrigated pasture | 225 | 2 | 187 | 2 | 187 | 4 |
| Dry pasture | 255 | -- | 568 | -- | 568 | -- |
| Food processing | -- | -- | -- | 60 | -- | 159 |
| Miscellaneous | 275 | -- | -- | -- | -- | -- |
| Totals | 829 | 33 | 829 | 91 | 829 | 199 |
| Total inmate population | 2,400 | | 2,460 | | 2,800 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958 |
|---|-----------|-----------|------------|
| Total value dairy production | \$123,904 | \$116,338 | \$115,028 |
| Total cost dairy production | 112,694 | 98,455 | 104,443 |
| Net income | \$11,210 | \$17,883 | \$10,585 |
| Cost per gallon milk produced | .58 | .56 | .69 |
| Milk production (gallons) | 196,023 | 175,733 | 171,262 |
| Average number of cows (milking and dry) .. | 147 | 147 | 152 |
| Production per cow (pounds) | 11,503 | 10,281 | 9,699 |
| Animals (June 30) | | | (12/31/58) |
| Cows, milking and dry | 142 | 154 | 153 |
| Heifers, 2 years | 31 | 15 | 20 |
| Heifers, 1 year | 43 | 60 | 55 |
| Calves, 6 months to 1 year | 7 | 5 | 11 |
| Calves, under 6 months | 15 | 16 | 26 |
| Totals | 238 | 250 | 265 |

Swine

| (Operation discontinued as of July 1) | 1956-57 | 1957-58 | 1958 |
|---------------------------------------|----------|----------|----------|
| Total value hog production----- | \$47,851 | \$40,052 | \$21,028 |
| Total cost hog production----- | 53,172 | 38,624 | 20,882 |
| Net income ----- | —\$5,321 | \$1,428 | \$146 |

Poultry

| (Operation discontinued as of July 1) | | | |
|---------------------------------------|----------|----------|----------|
| Total value poultry production----- | \$28,747 | \$33,677 | \$20,107 |
| Total cost poultry production----- | 36,246 | 37,229 | 24,132 |
| Net income ----- | —\$7,499 | —\$3,552 | —\$4,025 |

Food Processing (Cannery)

| | | | |
|--------------------------------|----|-----------|-----------|
| Total value of production----- | -- | \$223,617 | \$263,623 |
| Total cost of production----- | -- | -- | 267,672 |

| | | | |
|------------------|----|----|----------|
| Net income ----- | -- | -- | —\$4,049 |
|------------------|----|----|----------|

Production

| | | #10 cans | #10 cans |
|------------------|----|----------|----------|
| Fruit ----- | -- | 124,200 | 209,352 |
| Vegetables ----- | -- | 165,400 | 177,019 |
| Gelatin ----- | -- | 23,900 | -- |
| Totals ----- | -- | 313,500 | 386,371 |

SAN QUENTIN STATE PRISON**TOTAL OPERATIONS SUMMARY****Financial Report**

| | 1956-57 | 1957-58 | 1958 |
|---|-----------|-----------|------------|
| Total value dairy production----- | \$130,637 | \$119,793 | \$115,769 |
| Total cost dairy production----- | 114,357 | 116,484 | 102,495 |
| Net income ----- | \$16,280 | \$3,309 | \$13,274 |
| Cost per gallon milk produced----- | .55 | .66 | .56 |
| Milk production (gallons)----- | 206,763 | 175,817 | 182,132 |
| Average number of cows (milking and dry) -- | 140 | 140 | 139 |
| Production per cow (pounds)----- | 12,740 | 10,800 | 11,269 |
| Animals (June 30) | | | (12/31/58) |
| Cows, milking and dry----- | 147 | 137 | 132 |
| Heifers, 2 years----- | 7 | 23 | 10 |
| Heifers, 1 year----- | 10 | 1 | 8 |
| Calves, 6 months to 1 year----- | 1 | 16 | 18 |
| Calves, under six months----- | 36 | 27 | 20 |
| Bulls, mature ----- | 1 | -- | -- |
| Bulls, immature ----- | 8 | -- | -- |
| Totals ----- | 210 | 204 | 188 |
| Inmate assignments (dairy)----- | 34 | 36 | 33 |
| Total population ----- | 4,051 | 4,130 | 4,530 |

CORRECTIONAL TRAINING FACILITY

TOTAL OPERATIONS SUMMARY

| Financial Report | 1956-57 | 1957-58 | 1958 |
|--------------------------------------|-----------|-----------|-----------|
| Total value of farm production | \$311,112 | \$389,568 | \$400,606 |
| Total cost of production | 287,305 | 322,588 | 336,543 |
| Total net income | \$23,807 | \$66,980 | \$64,063 |
| Dairy | \$27,374 | \$47,484 | \$52,363 |
| Hogs | 28,572 | 6,098 | 4,257 |
| Poultry | —1,296 | 4,881 | 3,733 |
| Field crops | 59,879 | 8,517 | 3,710 |

| | 1956-57 | | 1957-58 | | 1958 | |
|--------------------------------|---------|---------|---------|---------|-------|---------|
| Acreage and Inmate Assignments | Acres | Inmates | Acres | Inmates | Acres | Inmates |
| Dairy | 5 | 25 | 8 | 37 | 8 | 37 |
| Hogs | 3 | 20 | 6 | 23 | 6 | 23 |
| Poultry | 6 | 17 | 11 | 17 | 11 | 18 |
| Field crops | 499 | 35 | 574 | 70 | 613 | 69 |
| Pasture— | | | | | | |
| Dairy | 35 | -- | 47 | -- | 53 | -- |
| Hogs | 54 | -- | -- | -- | -- | -- |
| Miscellaneous | 334 | 43 | 290 | 30 | 245 | 33 |
| Totals | 936 | 140 | 936 | 177 | 936 | 180 |
| Total inmate population | 2,200 | | 2,158 | | 2,545 | |

ENTERPRISE SUMMARIES

| Dairy | 1956-57 | 1957-58 | 1958 |
|---|-----------|-----------|------------|
| Total value dairy production | \$139,379 | \$186,880 | \$197,732 |
| Total cost dairy production | 112,005 | 139,395 | 145,369 |
| Net income | \$27,374 | \$47,485 | \$52,363 |
| Cost per gallon milk produced | .52 | .52 | .63 |
| Milk production (gallons) | 215,972 | 261,619 | 258,823 |
| Average number of cows (milking and dry) .. | 154 | 182 | 188 |
| Production per cow (pounds) | 14,141 | 12,362 | 11,838 |
| Animals (June 30) | | | (12/31/58) |
| Cows, milking and dry | 171 | 186 | 191 |
| Heifers, 2 years | 18 | 24 | 26 |
| Heifers, 1 year | 61 | 58 | 71 |
| Calves, 6 months to 1 year | 58 | 68 | 71 |
| Calves, under 6 months | 22 | 19 | 15 |
| Bulls, mature | 3 | 3 | 2 |
| Bulls, immature | -- | 1 | 1 |
| Totals | 333 | 359 | 377 |

| Swine | 1956-57 | 1957-58 | 1958 |
|-------------------------------------|-----------|-----------|------------|
| Total value hog production..... | \$129,428 | \$66,331 | \$67,757 |
| Total cost hog production..... | 100,856 | 60,233 | 63,500 |
| Net income | \$28,572 | \$6,098 | \$4,257 |
| Pork production | | | |
| Cost per pound..... | -- | .23 | .25 |
| Liveweight | -- | 238,532 | 240,463 |
| Animals (June 30) | | | (12/31/58) |
| Fat hogs | 41 | 139 | 50 |
| Feeders | 364 | 299 | 377 |
| Pigs, weaned | 114 | 179 | 243 |
| Pigs, suckling | 142 | 299 | 296 |
| Sows and gilts | 75 | 102 | 124 |
| Boars | 4 | 5 | 5 |
| Totals | 740 | 1,023 | 1,095 |
| Poultry | | | |
| Total value poultry production..... | \$41,151 | \$45,284 | \$47,092 |
| Total cost poultry production..... | 42,447 | 40,403 | 43,359 |
| Net income | —\$1,296 | \$4,881 | \$3,733 |
| Cost per dozen eggs..... | .43 | .40 | .40 |
| Total egg production, dozen..... | 99,390 | 101,160 | 107,086 |
| Average number laying hens..... | 5,292 | 4,339 | 4,443 |
| Eggs per hen..... | 225 | 280 | 289 |
| Birds (June 30) | | | (12/31/58) |
| Laying hens | 4,633 | 4,197 | 4,236 |
| Other chickens | 3,939 | 3,607 | 2,645 |
| Totals | 8,572 | 7,804 | 6,881 |
| Field Crops | | | |
| Total value crop production..... | \$55,845 | \$91,074 | \$88,024 |
| Total cost crop production..... | 60,379 | 82,557 | 84,314 |
| Net income | —\$4,534 | \$8,517 | \$3,710 |
| Production | | | |
| All crops | 499 acres | 621 acres | 666 acres |

PART B
SUMMARY OF STATE COLLEGE FARM OPERATIONS
FOR THE 1958-1959 FISCAL YEAR

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
SACRAMENTO 14, December 21, 1959

HONORABLE PAUL L. BYRNE, *Chairman*
Senate Fact Finding Committee on Agriculture
State Capitol, Sacramento, California

DEAR SENATOR BYRNE: The attached report on state college farm operations for the 1958-59 fiscal year has been prepared separately for economy and ease of handling. The following colleges carry on agricultural instruction leading to certificates or degrees:

California State Polytechnic College, San Luis Obispo, J. A. McPhee, President; V. Shepard, Dean of Agriculture.

California State Polytechnic College, Kellogg-Voorhis, J. A. McPhee, President; K. Englund, Dean of Agriculture.

Chico State College, G. Kendall, President; L. Phillips, Dean of Agriculture.

Fresno State College, A. Joyal, President; L. Dowler, Dean of Agriculture.

Respectfully submitted,

ROBERT L. HARKNESS
Assistant Director

CALIFORNIA STATE POLYTECHNIC COLLEGE—KELLOGG-VOORHIS

AGRICULTURAL OPERATIONS—1958-1959 FISCAL YEAR

| Enterprise or subject field | Students (majors) | Project Program | | | Instruction, Etc. | |
|--------------------------------|----------------------|-------------------|---------|----------|-------------------|-------|
| | | Units | Animals | Acres | Animals | Acres |
| Livestock ----- | 125 | -- | -- | -- | -- | 500 |
| a. Beef ----- | -- | 11 | 75 | Feed Lot | 143 | -- |
| b. Sheep ----- | -- | 38 | 300 | Feed Lot | 155 | -- |
| c. Swine ----- | -- | 28 | 159 | Feed Lot | 490 | -- |
| d. Horses ----- | -- | -- | -- | -- | 84 | -- |
| Dairy ----- | -- | -- | -- | -- | -- | -- |
| Poultry ----- | -- | -- | -- | -- | -- | -- |
| Fruit ----- | 35 | 7 | -- | 4 | -- | 80 |
| Crops ----- | 73 | 17 | -- | 45 | -- | 267 |
| Grapes ----- | -- | -- | -- | -- | -- | 4 |
| Ornamentals ----- | 170 | 12 | -- | 3 | -- | 6 |
| Agricultural Inspection ----- | 36 | | | | | |
| Agricultural Education ----- | -- | Total FTE: | | | | |
| Agricultural Engineering ----- | -- | Agriculture ----- | | | 329 | |
| Agricultural Mechanics ----- | -- | Institution ----- | | | 1,277 | |
| Agricultural Management ----- | -- | | | | | |
| Agricultural Business ----- | 86 | Total Students: | | | | |
| General Agriculture ----- | -- | Agriculture ----- | | | 538 | |
| Soil Science ----- | 13 | Institution ----- | | | 1,209 | |
| Enology ----- | -- | | | | | |

LAND AVAILABLE FOR AGRICULTURE (Acres)

| | Level | | Rolling | | Hills | |
|--------------|-----------|-----|-----------|-----|-----------|-----|
| | Irrigated | Dry | Irrigated | Dry | Irrigated | Dry |
| Owned ----- | 73 | 90 | 50 | 40 | 9 | 377 |
| Leased ----- | 87 | 70 | -- | 90 | -- | 23 |

CALIFORNIA STATE POLYTECHNIC COLLEGE—SAN LUIS OBISPO

AGRICULTURAL OPERATIONS—1958-1959 FISCAL YEAR

| Enterprise or subject field | Students (majors) | Project Program | | | Instruction, Etc. | |
|--------------------------------|----------------------|-------------------|---------|-------|-------------------|-------|
| | | Units | Animals | Acres | Animals | Acres |
| Livestock ----- | 310 | -- | -- | -- | -- | 2,050 |
| a. Beef ----- | -- | 41 | 784 | -- | 463 | -- |
| b. Sheep ----- | -- | 15 | 469 | -- | 286 | -- |
| c. Swine ----- | -- | 44 | 782 | -- | 332 | -- |
| d. Horses ----- | -- | 70 | 98 | -- | 35 | -- |
| Dairy ----- | 82 | 34 | 168 | -- | 188 | 380 |
| Poultry ----- | 38 | 41 | 11,000 | -- | 7,000 | 15 |
| Fruit ----- | 19 | -- | -- | -- | -- | 25 |
| Crops ----- | 86 | 27 | -- | 76 | -- | 264 |
| Grapes ----- | -- | -- | -- | -- | -- | -- |
| Ornamentals ----- | 42 | 21 | -- | -- | -- | 3 |
| Food Processing ----- | -- | | | | | |
| Agricultural Inspection ----- | -- | Total FTE: | | | | |
| Agricultural Education ----- | 30 | Agriculture ----- | | | 596 | |
| Agricultural Engineering ----- | 132 | Institution ----- | | | 4,245 | |
| Agricultural Mechanics ----- | 130 | | | | | |
| Agricultural Management ----- | 98 | Total Students: | | | | |
| Agricultural Business ----- | -- | Agriculture ----- | | | 1,030 | |
| General Agriculture ----- | -- | Institution ----- | | | 3,938 | |
| Soil Science ----- | 65 | | | | | |
| Enology ----- | -- | | | | | |

LAND AVAILABLE FOR AGRICULTURE (Acres)

| | Level | | Rolling | | Hills | |
|--------------|-----------|-----|-----------|-----|-----------|-------|
| | Irrigated | Dry | Irrigated | Dry | Irrigated | Dry |
| Owned ----- | 100 | -- | 80 | 300 | -- | 1,669 |
| Leased ----- | -- | -- | -- | -- | -- | 267 |

CHICO STATE COLLEGE

AGRICULTURAL OPERATIONS—1958-1959 FISCAL YEAR

| <i>Enterprise or subject field</i> | <i>Students (majors)</i> | <i>Project Program</i> | | | <i>Instruction, Etc.</i> | |
|--|------------------------------|------------------------|----------------|--------------|--------------------------|--------------|
| | | <i>Units</i> | <i>Animals</i> | <i>Acres</i> | <i>Animals</i> | <i>Acres</i> |
| Livestock ----- | 17 | -- | -- | -- | -- | -- |
| a. Beef ----- | -- | 12 | -- | -- | -- | 25 |
| b. Sheep ----- | -- | 9 | -- | -- | -- | 5 |
| c. Swine ----- | -- | 8 | -- | -- | 7 | -- |
| d. Horses ----- | -- | 3 | -- | -- | -- | -- |
| Dairy ----- | 4 | 10 | -- | -- | 8 | 15 |
| Poultry ----- | -- | 4 | -- | -- | -- | -- |
| Fruit ----- | 10 | 10 | -- | -- | -- | -- |
| Crops ----- | 29 | 30 | -- | -- | -- | 120 |
| Grapes ----- | -- | -- | -- | -- | -- | -- |
| Preveterinary ----- | 4 | -- | -- | -- | -- | -- |
| Agricultural Education ----- | 12 | Total FTE: | | | | |
| Agricultural Mechanics ----- | 8 | Agriculture ----- | | | 71 | |
| Agricultural Business ----- | 10 | Institution ----- | | | 2,811 | |
| General Agriculture ----- | 73 | Total Students: | | | | |
| Soil Science ----- | 1 | Agriculture ----- | | | 189 | |
| Preforestry ----- | 11 | Institution ----- | | | 2,974 | |

LAND AVAILABLE FOR AGRICULTURE (Acres)

| | <i>Level</i> | | <i>Rolling</i> | | <i>Hills</i> | |
|--------------|------------------|------------|------------------|------------|------------------|------------|
| | <i>Irrigated</i> | <i>Dry</i> | <i>Irrigated</i> | <i>Dry</i> | <i>Irrigated</i> | <i>Dry</i> |
| Owned ----- | -- | -- | -- | -- | -- | -- |
| Leased ----- | 30 | 160 | -- | -- | -- | -- |

FRESNO STATE COLLEGE

AGRICULTURAL OPERATIONS—1958-1959 FISCAL YEAR

| <i>Enterprise or subject field</i> | <i>Students (majors)</i> | <i>Project Program</i> | | | <i>Instruction, Etc.</i> | |
|--|------------------------------|------------------------|----------------|--------------|--------------------------|--------------|
| | | <i>Units</i> | <i>Animals</i> | <i>Acres</i> | <i>Animals</i> | <i>Acres</i> |
| Livestock ----- | 76 | -- | -- | -- | -- | -- |
| a. Beef ----- | -- | 22 | 150 | -- | 150 | 130 |
| b. Sheep ----- | -- | 10 | 200 | -- | 250 | 17 |
| c. Swine ----- | -- | 14 | 150 | -- | 60 | 13 |
| d. Horses ----- | -- | -- | -- | -- | 28 | 15 |
| Dairy ----- | 16 | -- | -- | -- | 150 | 58 |
| Poultry ----- | 8 | 3 | 1,500 | -- | 3,000 | 11 |
| Fruit ----- | 20 | 4 | -- | 40 | -- | 65 * |
| Crops ----- | 51 | 22 | -- | 150 | -- | 438 |
| Grapes ----- | 36 | 25 | -- | 120 | -- | 49 |
| Ornamentals ----- | 15 | -- | -- | -- | -- | -- |
| Food Processing ----- | 7 | Total FTE: | | | | |
| Agricultural Inspection ----- | 7 | Agriculture ----- | | | 184 | |
| Agricultural Education ----- | 41 | Institution ----- | | | 4,474 | |
| Agricultural Mechanics ----- | 12 | Total Students: | | | | |
| General Agriculture ----- | 80 | Agriculture ----- | | | 372 | |
| Enology ----- | 3 | Institution ----- | | | 5,987 | |

LAND AVAILABLE FOR AGRICULTURE (Acres)

| | <i>Level</i> | | <i>Rolling</i> | | <i>Hills</i> | |
|--------------|------------------|------------|------------------|------------|------------------|------------|
| | <i>Irrigated</i> | <i>Dry</i> | <i>Irrigated</i> | <i>Dry</i> | <i>Irrigated</i> | <i>Dry</i> |
| Owned ----- | 1,018 * | -- | -- | -- | -- | -- |
| Leased ----- | -- | 70 | -- | -- | -- | -- |

* 40 acres of orchard leased to U.S.D.A.

PART C

RECOMMENDATIONS RE CAPITAL OUTLAY EXPENDITURES IN THE 1959-1960
BUDGET FOR AGRICULTURAL ACTIVITIES AT STATE INSTITUTIONS

CALIFORNIA LEGISLATURE
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
September 30, 1959

MR. JOHN E. CARR
Director of Finance
State Capitol, Sacramento, California

DEAR MR. CARR: Pursuant to instructions from Senator Paul L. Byrne, Chairman of the Senate Fact Finding Committee on Agriculture, this is to inform you that the full committee met on the dates indicated at the following state institutions to review appropriations for capital outlay items appearing in the 1959-60 Budget for agricultural activities at the various state institutions.

Tuesday, August 11, 1959, 10 a.m.—Deuel Vocational Institution. While here the committee also took action on two items relating to the Preston School of Industry at Ione.

Tuesday, August 11, 1959, 3 p.m.—Agnews State Hospital. While here the committee also took action on the one item at Mendocino State Hospital.

Wednesday, August 12, 1959, 10 a.m.—California State Prison at Soledad. While here the committee also took action on the one item relating to the San Quentin State Prison.

Thursday, August 13, 1959, 10 a.m.—Fresno State College. While here the committee took action on those items relating to Chico State College.

Tuesday, August 25, 1959, 10 a.m.—San Luis Obispo Campus, California Polytechnic College.

Wednesday, August 26, 1959, 10 a.m.—Kellogg Campus, California Polytechnic College. While here the committee took action on one item relating to the California Institution for Men at Chino.

Participating in the series of meetings were the following members of the committee: Senators Paul L. Byrne, J. William Beard, Nathan F. Coombs, Alan A. Erhart, John J. Hollister, Jr., Robert I. Montgomery, Virgil O'Sullivan, Joseph A. Rattigan, Waverly Jack Slattery, Walter W. Stiern, and J. Howard Williams. At the meeting on August 11 at Agnews State Hospital, Senator John F. Thompson was present. At the meeting at Fresno State College on August 13, Assemblyman Bert DeLotto was present.

The committee, functioning pursuant to the provisions of Senate Resolution No. 135 of the 1959 Regular Session of the Legislature, approved structures and facilities for agricultural activities appearing in the 1959-60 Budget as per the attached report for the following institutions:

Department of Corrections—California Institution for Men at Chino, California State Prison at San Quentin, California State Prison at Soledad, Deuel Vocational Institution.

Department of Education—California State Polytechnic College, Kellogg-Voorhis Campus; California State Polytechnic College, San Luis Obispo Campus; Chico State College, Fresno State College.

Department of Mental Hygiene—Mendocino State Hospital, Agnews State Hospital.

Youth Authority—Preston School of Industry at Ione.

The committee also took action on items at several of the institutions, which items do not appear in the 1959-60 Budget but which are properly the concern of the committee functioning pursuant to the provisions of Senate Resolution No. 135 and are of vital importance to the future agricultural activities of the respective institutions.

Respectfully submitted,

PAUL K. HUFF

DEPARTMENT OF CORRECTIONS

CALIFORNIA INSTITUTION FOR MEN, CHINO

Drill Well and Install Pump.....\$23,000

Additional irrigation water is needed for the increased production of crops for canning and dairy feed. This well will be located in an area that will enable a tie-in with other lines. This project will be accomplished by contract.

Cost estimate:

Well, pump, house and electrical service.....\$23,000

The committee recommends approval.

DEUEL VOCATIONAL INSTITUTION

Provide Farm Improvements.....\$3,600

A. *Construct Concrete Hog Feeding Pen*.....\$2,375

This is necessary to reduce the overcrowding of the present facilities and is not for expansion of hog production. This project consists of the construction of a hog feeding pen 40' x 60' with 3' concrete walls and a 21' wooden roof designed to match existing structures. This project will be accomplished by institution maintenance personnel and inmate labor.

Cost estimate:

| | |
|------------------------|-------|
| Concrete | \$785 |
| Pit run | 250 |
| Lumber | 400 |
| Roofing | 175 |
| Reinforcing wire | 225 |
| Supervision | 450 |
| Inmate pay | 90 |

| | |
|-------------|---------|
| Total | \$2,375 |
|-------------|---------|

B. *Construct Shelter Over Breeding Chute*.....\$185

Protection from direct sun rays is essential for collection of semen. The bull is used almost entirely for artificial insemination at this institution. The dimensions of the shelter roof area are 10' x 14'. This project will be done by institution maintenance personnel and inmate labor.

Cost estimate:

| | |
|---------------------|------|
| Roofing | \$40 |
| Lumber | 40 |
| Pipe, 4", I.D. | 50 |
| Supervision | 50 |
| Inmate pay | 5 |

| | |
|-------------|-------|
| Total | \$185 |
|-------------|-------|

C. *Construct Additional Dairy Dividing Corral*.....\$1,040

This corral will be used for separating out dry stock and replacement heifers for breeding, medication, checking ear tags, loading or moving, etc. Present facilities create hazards to animals and personnel. This project will also be accomplished by institution maintenance personnel and inmate labor.

Cost estimate:

| | |
|--|-------|
| 4,560 bd. ft. lumber and 10 yds. concrete..... | \$800 |
| Supervision | 200 |
| Inmate pay | 40 |

| | |
|-------------|---------|
| Total | \$1,040 |
|-------------|---------|

The committee recommends approval of these three items in the total amount of \$3,600.

SAN QUENTIN STATE PRISON

Concrete Holding Corral and Ramp—Dairy----- \$3,000

This project provides for the construction of a 60' x 60' concrete slab and 12' wide ramp 500' long. These items will provide safety and cleanliness in moving cows from shelter area in rainy weather and wash area next to milking barn. This work will be done by inmate labor.

Cost estimate:

| | |
|-------------------|----------------|
| Materials ----- | \$2,690 |
| Supervision ----- | 310 |
| Total ----- | <u>\$3,000</u> |

The committee recommends approval.

SOLEDAD STATE PRISON

Provide Primary Disposal Ponds----- \$27,925

This project consists of the installation of equipment to be used in the separation of solids and the construction of two settling basins. It is understood that equipment for solid separation was secured from the Metropolitan State Hospital when dairy and hog operations were terminated at that institution. The Division of Architecture has not completed final plans for this unit. However, the funds budgeted appeared to be adequate for the project, and for this reason the committee recommends approval.

YOUTH AUTHORITY

PRESTON SCHOOL OF INDUSTRY

A. Construct Dairy Feeding Barn----- \$22,150

The dairy herd has been increased to take care of the milk needs of Fricot Ranch School for Boys at San Andreas, the Pinegrove Forestry Youth Camp at Pinegrove, and the Northern California Reception Center and Clinic at Perkins, in addition to the Preston School of Industry. This building is planned to supply added storage and stanchion space. The cost estimate on this project is on a contract basis.

The committee recommends approval.

B. Install Metal Feed Bins----- \$3,880

These bins will provide for bulk purchase of feed. The savings from this, plus the desirability of premixed feeds (possibly pelleted) will make this an excellent investment. The following cost estimates for these metal feed bins are on an installed basis:

| | |
|---------------|----------------|
| Dairy ----- | \$1,240 |
| Hogs ----- | 1,400 |
| Poultry ----- | 1,240 |
| Total ----- | <u>\$3,880</u> |

The committee recommends approval.

DEPARTMENT OF MENTAL HYGIENE

AGNEWS STATE HOSPITAL

Replace Irrigation Line—East Area ----- \$2,700

Project will provide for the replacement of 1,600 feet of 12" concrete irrigation line. The existing concrete pipeline is in excess of 25 years old and constructed of inferior concrete by today's standards. Farm equipment crossing this line has broken and cracked the line until repair is no longer practical or economical. It is proposed to accomplish the installation of the pipeline by contract.

Estimated cost data:

| | |
|--|---------|
| 1,600 feet 12" T&G concrete irrigation line @ \$1.40 ----- | \$2,240 |
| 4 only 12" snow valves @ \$25 ----- | 100 |
| 3 only 12" Cajon line gates @ \$110 ----- | 330 |
| 3 only line vents ----- | 30 |

| | |
|-------------|---------|
| Total ----- | \$2,700 |
|-------------|---------|

The committee recommends approval.

MENDOCINO STATE HOSPITAL

Repairs and Additions to Hog Ranch ----- \$2,500

A. *Replace five 10' x 40' Feeding Floors at Hog Ranch.* Existing floors are 10 years old, badly worn, rough, cracked and deteriorated by food acids, making them very difficult and time consuming to clean. It is proposed to cover the old concrete surface with concrete veneer two to three inches thick.

Estimated cost data (2,000 square feet @ \$.70):

| | |
|-----------------|-------|
| Materials ----- | \$700 |
| Labor ----- | 700 |

| | |
|-------------|---------|
| Total ----- | \$1,400 |
|-------------|---------|

B. *Mount Garbage Cooker on Permanent Foundation.* This project provides for the permanent mounting of existing mobile garbage cooker, including the construction of a concrete ramp to facilitate the dumping of the garbage cans into the cooker, and the installation of an electric drive to the agitator. The cooker is now truck mounted and constructed too low for emptying cooked garbage into feeding carts.

Estimated cost data:

| | |
|-----------------|-------|
| Materials ----- | \$700 |
| Labor ----- | 400 |

| | |
|-------------|---------|
| Total ----- | \$1,100 |
|-------------|---------|

The committee recommends approval of these two items in the total amount of \$2,500.

DEPARTMENT OF EDUCATION

CHICO STATE COLLEGE

1. Land Acquisition ----- \$250,000

This money was appropriated in the 1959-60 Budget Act, Section 312.5, and is designed to supplement the \$500,000 originally authorized for the purchase of a farm for a four-year agricultural instructional program. The additional funds are necessary, as the initial \$500,000 authorized for this purpose is not adequate to purchase the site now under consideration.

The committee recommends approval.

2. **Equipment and Livestock for Farm**----- \$50,000
 This is the second increment for the purchase of equipment and animals necessary to operate the college farm when obtained. Equipment will be selected from a list approved last year.

3. **Erect 3 Quonset Huts**----- \$10,500
 These buildings are planned for farm mechanics instruction and storage until permanent facilities are provided. They will be so located to be of continued value for storage.

4. **Construct Pole Barn**----- \$1,000
 This barn is planned for a shelter for dairy animals and feed until adequate permanent buildings are provided.

The committee recommends approval of the funds as budgeted for Items 2, 3, and 4, contingent upon the acquisition of a suitable farm site, with the understanding that the site selected will determine the actual items which will be necessary.

5. **Equip Agricultural Classrooms**----- \$70,800
 The agricultural classrooms will be in the physical science building. These funds will be used to supply the needed facilities for this section.

The committee recommends approval of this item with no reservations, as the equipment for agricultural classrooms will be necessary, regardless of the site selected.

FRESNO STATE COLLEGE

1. **Replace Three Farm Wells**----- \$15,750
 The water table has been declining rapidly in the Fresno area and the requested pumps and wells will replace old marginal units, many of which are 25-30 years old.

| | |
|--|----------|
| a. Three 25 h.p. deep well turbines @ \$4,000----- | \$12,000 |
| b. Drill three wells: | |
| (1) Drilling 160' @ \$2.50/ft., (\$400/well)----- | 1,200 |
| (2) Casing 120' @ \$4.50/ft., (\$540/well)----- | 1,620 |
| (3) Developing @ \$250/well----- | 750 |
| (4) Miscellaneous work @ \$60/well----- | 180 |
| Total----- | \$15,750 |

The committee recommends approval.

2. **Install Raisin Processing Equipment—Phase II**----- \$5,000
 This equipment was requested as a part of the original complement of equipment for the raisin processing building, but insufficient funds made it necessary to delete these items. The installation of this equipment will permit operating the raisin processing plant completely in compliance with the U.S.D.A. pure food laws.
 Purchase and install the following equipment:

| | |
|---|---------|
| a. Budget hoist, $\frac{1}{4}$ ton, 115V, complete----- | \$395 |
| b. Sand tester, shaker, U.S.D.A. model, complete----- | 450 |
| c. Fiber box sealer unit----- | 575 |
| d. Quality raisin grader, Coast Lab. type----- | 1,785 |
| e. Portable steam generator, oil fired, 120 gal.----- | 735 |
| f. Overhead heater----- | 1,000 |
| g. Over and under scale----- | 60 |
| Total----- | \$5,000 |

The committee recommends approval.

- 3. Construct Fruit Fumigation and Storage Room**----- \$5,000
- This room was a part of the original building, but was deleted due to insufficient funds. The fumigation room will be used to treat incoming fruit from the field prior to packing. The storage room will provide space for packinghouse supplies.
- The project includes the construction of a 20' x 20' addition to existing building. The storage room will be 10' x 10' with open shelves on three sides. The fumigation room will be 10' x 10' with fumigation injection and exhaust equipment. The room will be sealed to provide for maximum utilization of fumigants.
- The committee recommends approval.
- 4. Construct Greenhouse**----- \$1,000
- The construction of this small 8' x 16' x 5' greenhouse for plant pathology is one of three requested this year. Two additional greenhouses were deleted due to lack of funds. The project will be completed under contract and the price is based on a firm bid from the manufacturer.
- The committee recommends approval.
- 5. Remodel Dairy Calf Barn**----- \$1,500
- This project is designed to convert the existing dairy calf barn into a judging laboratory. The work to be completed is listed below. This will be handled by students in the agricultural mechanics classes. Calves are now being raised in individual movable units.
- | | |
|--|---------|
| a. Floor area, concrete, 2,790' ² @ \$0.40----- | \$1,116 |
| b. Concrete wash area, 265' ² @ \$0.40----- | 106 |
| c. Wash area fencing----- | 75 |
| d. Relocate water facilities----- | 53 |
| e. Install bleachers—model and paint----- | 150 |
| Total----- | \$1,500 |
- The committee recommends approval.
- 6. Construct Poultry Cull Pens and Range Shelters**----- \$720
- Six cull pens (3' x 10') and six shelters (6' x 10') are to be constructed by agricultural mechanics classes. Materials only are requested for this project.
- The committee recommends approval.
- 7. Install Sawdust Removal Equipment**----- \$4,000
- This project was approved by the Joint Interim Committee on Agricultural and Livestock Problems in 1957, but was deferred by the college due to tremendous increase in final bid price by local contractors. A sawdust collection system is required by State Public Health laws (Title 8, State Administrative Code). The present allocation will be adequate and firm bids have been received from contractors.
- The committee recommends approval.
- 8. Replace Dairy Corral Fence**----- \$4,000
- The existing wire mesh fence has been broken down by the cattle in close quarters. The installation of a pipe-cable fence will give a lifetime fence. It is desired by the college that the project be constructed by advanced welding students under supervision of the Agricultural Mechanics Department. Fill is necessary to prevent flooding during wet weather. Fill dirt may be obtained from campus construction projects at no cost. If this can be accomplished, a request will be made to transfer savings to build additional fencing.

Cost Estimate:

| | |
|---|---------|
| a. 1,000' 2" galv. pipe @ \$0.71 ft.----- | \$710 |
| b. 580' 3" galv. pipe @ \$0.90 ft.----- | 520 |
| c. 3,000' $\frac{5}{8}$ " steel cable @ \$0.09 ft.----- | 270 |
| d. Misc. supplies including concrete, rod, bolts, etc.----- | 150 |
| e. 1,000 yds. fill dirt @ \$1.50 yd. ³ ----- | 1,500 |
| f. Labor for welding, setting posts, cable, removing old fence----- | 850 |
| Total ----- | \$4,000 |

The committee recommends approval.

9. Land Acquisition ----- \$1,440,000

\$1,440,000 appears in the Budget Act of 1959 as Item 314.5. The Budget Act specifically provides that no expenditures will be made for this item unless the Legislature authorizes the sale of the Hammer Field property. In this connection, Senate Bill No. 1369, approved by the Governor on July 16, 1959, gives the Director of the Department of Finance authority to sell Hammer Field.

This appropriation is desired in order to permit the college to consolidate its farming operations by acquiring acreage north of the present main farm site.

The committee, after considerable discussion, recommends approval of the item as budgeted. It should be pointed out that the committee did inspect the acreage under consideration north of the college; however, no action was taken.

CALIFORNIA STATE POLYTECHNIC COLLEGE—KELLOGG-VOORHIS

1. Construct Meat Processing Building ----- \$198,300

This building will provide the institution with a means of evaluating the carcasses of meat animals produced under the college instructional-production-management-breeding and feeding programs. It also fills their need for facilities in which to train students in meat processing and meat technology.

The committee recommends approval of this item as budgeted with the understanding that at the request of the college it will be subject to revision by college officials and officials of the Division of Architecture for reduction in cost.

2. Equip Meat Processing Building ----- \$19,750

The equipment necessary for satisfactory operation of the new building will be purchased with these funds.

The committee recommends approval.

3. Replace Horse Paddock—Phase II ----- \$5,075

This is the last part of a two-step program to provide chain link fence and additional divisional fences in the Arabian horse paddocks. All work will be by contract.

College officials pointed out that this was a contract project, as not enough students were in residence on the campus to accomplish the work in time as a student project. It was further pointed out that from a safety standpoint on this particular project the chain link type of fence is almost a necessity. However, in future projects, when found feasible, the committee was assured by college officials that consideration will be given to the use of a cable and pipe type fence.

In the discussion of this item it was pointed out that in the construction of Phase I of the project, college officials were able to effect a savings of approximately \$2,000. The committee is hopeful that a similar savings can be realized in the construction of Phase II of this project.

The committee recommends approval.

4. Addition to Crops and Fruit Units ----- \$9,250

Extension of the present building by 32' x 50' is necessary for storage of equipment and supplies. Tents are now being used temporarily. This project also provides for the installation of a box conveyor and construction of two tandem axle fruit trailers to assist in fruit handling.

Cost Estimate:

| | |
|--|---------|
| a. Building Contract 1,600 sq. ft. @ \$5.00----- | \$8,000 |
| b. Two trailers (90 box) Materials----- | 750 |
| c. Box Conveyor (75')----- | 500 |
| Total ----- | \$9,250 |

The committee recommends approval.

5. Property Exchange ----- \$1,000,000

These funds are authorized for the purchase of property to replace that which will be cut off by the proposed county expressway road. The sale of the above property can be delayed until the road is in, and values enhanced to more closely equal that of the place being obtained. The Budget Act of 1959, Item 333 (q), appropriated \$1,000,000 for site acquisition at the Kellogg-Voorhis Campus, with the specific proviso "that no part of this appropriation for (q) . . . shall be expended until a mutually satisfactory agreement has been entered into by the Department of Education and the Department of Finance, providing for the repayment to the state construction program of the amount expended therefor from proceeds received from the sale or disposition of other surplus property."

Senate Bill No. 1369, approved by the Governor on July 16, 1959, gave the Director of the Department of Finance authority to "sell, exchange, or otherwise dispose of, for value, and upon such terms and conditions and with such reservations and exceptions, as in his opinion may be for the best interests of the State, all or any part of the following real property: . . . Parcel 11. Approximately 165 acres of real property in the County of Los Angeles consisting of a portion of the the Kellogg Campus, California Polytechnic College; said acreage comprising the right-of-way for the proposed extension by the County of Los Angeles of Temple Avenue and that portion of the Kellogg Campus, California Polytechnic College, to be severed by said right-of-way." In commenting on the proposed property exchange, President McPhee assured the committee members that enough college property would be sold in order to repay to the State Construction Program Fund the \$1,000,000 appropriated by the Budget Act of 1959.

The committee recommends approval of the amount as budgeted.

6. Savings on Previously Authorized Project

In 1957, the Joint Interim Committee on Agriculture and Livestock Problems approved funds for a feed mill which would be located adjacent to the beef feed lots, complete with batching bins, hoppers, grinders, conveyers, and feed storage building. This project was originally budgeted at approximately \$200,000. It is understood that this project is being revised to a percentage type feed mill and should now cost around \$50,000 instead of the amount as originally budgeted.

Policy Statement

The full committee, after considerable discussion of the scope of agricultural operations and farm production at the several state institutions in terms of the primary objectives of the respective institutions, recommends that the committee staff prepare as soon as feasible a policy statement on this matter for consideration by the committee.

This policy statement if approved would serve as a guide to the committee in determining what degree of agricultural production is essential to and consistent with the fundamental objectives of the

farming program of that particular institution. The committee is cognizant of the fact that separate guides for each type of institution carrying on farming operations will be necessary.

CALIFORNIA STATE POLYTECHNIC COLLEGE—SAN LUIS OBISPO

1. Relocate Thoroughbred Unit..... \$22,900

This project provides funds for site clearance, grading and redrocking of the road and corrals. Once this has been accomplished the thoroughbred barn and stud barns will be cut in two, installed on new foundations, and reconnected.

The project also includes funds to install electrical and mechanical services for the thoroughbred and stud barns, in addition to the installation of drinking cups in the corrals and water troughs in the paddock areas.

Cost Estimate:

- a. Site development (day labor and student labor)..... \$4,500
Site clearance, grading, redrock road and corrals. Plant mix underbreezeway of barns.
- b. Move thoroughbred and stud barns (contract)..... 3,500
- c. General work (day labor and student labor)..... 13,700
Construct foundations, connect sections of thoroughbred barn.
- d. 10 percent State Employees' Retirement System..... 1,200

Total \$22,900

The committee recommends approval.

2. Relocate Thoroughbred Unit..... \$16,000

This item provides funds for the construction of an addition to the thoroughbred barn for a men's and women's lavatory, paint barns, install electrical and mechanical services. The project also provides for the installation of 6' link chain corral fences for the thoroughbred and stud barns.

Cost Estimate:

- a. General work (day labor and student labor)..... \$7,000
Painting, install 6' high link chain fence with 1½" top rail for corrals of thoroughbred and stud barns; construct men's and women's lavatory addition.
- b. Electrical work (student labor)..... 2,900
- c. Mechanical work (day labor and student labor)..... 5,500
- d. 10 percent State Employees' Retirement System..... 600

Total \$16,000

The committee recommends approval.

3. Thoroughbred Unit Fencing..... \$19,500

This project consists of removing existing pasture fencing and installing 3,080 feet of 5' high 11 gauge, link chain fencing with necessary gates around the perimeter of the thoroughbred unit paddock area, all posts set in concrete.

Cost Estimate:

- a. Material for 3,080 feet link chain fence \$15,100
- b. Installation labor (day labor and student labor)..... 4,400

Total \$19,500

The committee recommends approval.

4. Bulk Feed Trailer..... \$2,800

This bulk feed trailer is necessary in order to convert the feed milk to bulk feed deliveries. It will be used to haul the bulk feed to the various animal units. They do not have such equipment at present. It is essential in the program of converting to bulk handling.

It is proposed to equip the bulk trailer with 3-auger live bottom on trailer similar to Teco Trailer, 4-ton capacity, power takeoff dismountable extension on discharge to elevate feeds into department bulk feed bins 15' high. It is understood that the trailer chassis will be furnished by the college.

The committee recommends approval.

5. 1,000-pound Capacity Bulk Buggy with Scale----- \$550

This project provides funds for the purchase of a 1,000-pound capacity bulk buggy with scale which will facilitate the handling of bulk feed ground in the feed mill. At the present time there is no way of conveying and weighing the concentrates that are mixed through the feed mill into the several formulas used. The use of this buggy will increase the efficiency of the feed mill operation. It is proposed to purchase a 1,000-pound capacity bulk buggy burrow, CO model No. 1125.

The committee recommends approval.

6. Miscellaneous Improvements—Swine Unit----- \$850

This project provides for the replacement of 20 old, double compartment, water troughs with automatic fence waterers for hogs. The old, double compartment, concrete water troughs are impossible to keep clean and it is difficult to keep fresh water in them.

The project also provides for the construction of an 8' x 16' feeding platform in the swine pasture adjacent to the straw shed. This is the only hog pasture that does not have a feeding platform. The platform will eliminate a mudhole in the feeding area. The concrete pad will be poured by the agriculture engineering classes.

Cost Estimate:

| | |
|--|-------|
| a. Purchase 20 automatic fence line waterers @ \$30----- | \$600 |
| b. Labor for installation----- | 200 |
| c. 10 percent State Employees' Retirement System----- | 20 |
| d. 2 cu. yd. ready mix concrete----- | 30 |
| Total----- | \$850 |

The committee recommends approval.

7. Construct Food Processing Building----- \$1,412,600

This institutional facility is to serve four principal functions. These are meats, general purpose lecture and laboratory, food processing and dairy manufacturing. This building will serve the need for college trained graduates to enter the occupational fields in the broad area of processing and marketing agricultural products.

The meat processing area will supplement the present slaughterhouse facilities and sufficient meat will be processed to give the students the necessary background information in this large industry.

The food processing area will handle both fruits and vegetables that are produced on campus. This area will provide students with valuable experience in understanding the elements of canning and freezing vegetables and fruits. The college has hired a consultant on equipment so that flexible processing lines can be established to operate at a rate of approximately 500 pounds per hour. This is a minimum volume which will simulate commercial type processing.

The dairy manufacturing area is also of minimum design which will handle the milk produced by college herds. The size of the college dairy herd has been limited by the college and an increase in the herd is not anticipated in the foreseeable future. Most of the milk processed from the present herd will be used in the college cafeteria and the balance sold through the college store to students and employees. The college cafeteria will require dairy products in excess of those produced in this facility.

The committee recommends approval.

8. Land Acquisition ----- \$500,000

The purchase of land for fruit and crop production has been held in abeyance since the Joint Interim Committee on Agricultural and Livestock Problems rated the available sites during the 1958 visitation. In lieu of buying the acreage needed, negotiations were entered into on behalf of the college by the Department of Finance with the U.S. Army to lease a portion of the nearby Camp San Luis Obispo reservation. At the present time a long-term lease has been drafted and if the terms can be agreed upon this land can adequately serve the needs of the college's program for fruit and crop production with a sizable savings in cost in the appropriation. The total acreage involved is as follows:

| | <i>Irrigable</i> | <i>Camp crop land range and other</i> | <i>Total</i> |
|---------------|------------------|---|--------------|
| Federal ----- | 161.1 | 451.0 | 612.1 |
| State ----- | 116.6 | -- | 116.6 |
| | <u>277.7</u> | <u>451.0</u> | <u>728.7</u> |

The Legislature amended the land acquisition appropriation at the 1959 session so that a portion of the funds appropriated could be used to improve the camp property to put it in satisfactory condition to meet the needs of the college program.

The committee endorses the action that has been taken by the college in this matter and believes that if a satisfactory lease can be consummated to make use of this inactive federal and state military land that this would be preferable to outright purchase of private property.

9. Range Land Lease

On June 22, 1956, the Joint Interim Committee on Agricultural and Livestock Problems endorsed the recommendation of the southern subcommittee, which had recommended:

"The subcommittee unanimously recommended that these 2,369 acres of State land be excluded from the total acreage subject to lease to the Sixth Army and that this acreage be made available on a similar lease arrangement to California State Polytechnic College through its Foundation at a rate not to exceed that being paid by the Federal government."

Since that action the Department of Finance undertook a full review of all the Camp San Luis Obispo property leases, redefined boundaries, and have increased the rates. The parcel referred to above is now defined as 1,750 acres and during the past year the college was able to lease 267 acres of the parcel and has presented a request to the Department of Finance to lease an additional 200 acres for the 1959-60 grazing season.

In anticipation that the lease with the federal government can be satisfactorily worked out for the Fruit and Crop Production program (this acreage also includes some grazing land) and the fact that the college may also be able to graze animals on unleased camp property upon which buildings are located, the 467 acres (approximately) will meet the college's program needs for the next few years. This will permit the Department of Finance to lease the balance of the acreage to private operators on a 3 or 4 year basis at a rate of \$4.50 per acre. The private operators are apparently not interested in negotiating annual leases.

The college feels that inasmuch as the program in range management of commercial cattle is not for the purpose of being a profitmaking venture but is part of the instructional program of the college, that the \$4.50 rental fee which has been established for private operators be reduced to recognize that this is an instructional program of the college.

The committee recommends approval and acceptance of the above report on range land lease as presented by college officials.

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FIFTH ANNUAL REPORT
of the
CALIFORNIA RECIPROCITY COMMISSION
to the
CALIFORNIA STATE LEGISLATURE

(Section 8007—California Vehicle Code)

**Fifth Annual Report of the
California Reciprocity Commission**

*To: The Members of the Senate and Assembly
of the State of California*

Pursuant to Chapter 1002, Statutes of 1955, the California Reciprocity Commission herewith submits its annual report to the California Legislature:

COMMISSION MEMBERSHIP

| | |
|---------------------------|---|
| Robert McCarthy, Chairman | Director of Motor Vehicles |
| Glenn M. Anderson | Lieutenant Governor |
| Alan Cranston | State Controller |
| Robert B. Bradford | Director of Public Works |
| Bradford M. Crittenden | Commissioner, California Highway Patrol |

COMMISSION BUSINESS

The new commission assumed its duties in January 1959 (see Section 2600 of the California Vehicle Code). An organizational meeting was held on September 4, 1959, for the purpose of apprising the commissioners of the functions and duties of the California Reciprocity Commission. No business was conducted since negotiations were under way with the States of Iowa, Nebraska and Missouri to enter into the Uniform Prorate Agreement and at that time the agreements were not finalized for submission to the commission.

At a meeting of administrators from the compact states, held in Kansas City, Missouri, September 2-3, 1959, the name of the Compact Agreement was changed from "Western States Vehicle Registration Proration and Reciprocity Agreement" to "Uniform Vehicle Registration Proration and Reciprocity Agreement." This action was brought about by the fact that the reference to a "western compact agreement" no longer was descriptive of the compact since many mid-western states were negotiating to enter into the agreement.

RATIFICATION OF AGREEMENTS WITH IOWA AND NEBRASKA

Following the Kansas City meeting in September 1959, the States of Iowa and Nebraska submitted prorate agreements to the nine-state compact group and requested admission to the compact.

The Commission assembled on November 6, 1959, for the purpose of ratifying the two agreements. Members of the trucking industry were invited to attend the business session. The agreements were the standard form used by the Compact States complete with authentications and appendices of the respective states. Mr. E. G. Funke, representing the Attorney General, testified that the agreements complied with California requirements as to the legal content and they were thereupon ratified by the commission.

By popular vote the commissioners selected Mr. Robert McCarthy to act as chairman for the commission, to sign documents on its behalf, and to conduct business other than that calling for policy-making decisions of the commission as a whole.

RATIFICATION OF AGREEMENT WITH MISSOURI

Subsequent to the above action, the State of Missouri submitted a prorate agreement, together with authentication and appendix to the agreement, and requested that it be admitted to the compact. Another meeting of the Commission was called for December 14, 1959, at which time the Missouri agreement was ratified, the Commission having first been assured by the Attorney General's representative that the agreement met the requirements of the California law. The compact now consists of twelve western and midwestern states. This meeting was also attended by members of the trucking industry.

INTERCHANGE TRAILERS

Submitted to the commission for approval was a plan whereby the State of California would include interchange trailers in the prorate system.

By definition, the term "interchange trailers" does not refer to casual exchanges among truck operators, but to a certain type of lease agreement authorized by the United States Interstate Commerce Commission for the purpose of expediting the through movement of common carrier shipment of goods. Without such interchange provision, no common carrier could permit his equipment to be operated over routes for which he did not have commission authority. Thus, if a trailer were destined to a place beyond the authority of the common carrier to serve, it would be necessary to unload the goods and place them in the trailer of a carrier who did have authorization in the other territory. The Interstate Commerce Commission has, by rule, established the terms and conditions under which common carriers can exchange such equipment without unloading; this serves to reduce the cost of through movement and is termed "interchange."

The Uniform Prorate Agreement provides that prorate operators are considered to be the "owners" of leased equipment. The purpose of this is to prevent the prorate operator from avoiding prorate responsibility by leasing equipment licensed in noncompact reciprocal states; the agreement also requires prorate operators to report all additions and withdrawals from their fleets.

Were the prorate operator required to add and withdraw interchange trailers by proration supplement it would be an almost impossible task since interchange occurs without notice to the operator at points widely separated from his licensing control headquarters and at any hour around the clock. If it were necessary for an operator to await clearance of licensing procedures, stoppage of the interchange trailer would ensue until such licensing data could be forwarded to the various prorate states and clearance received which would enable the trailer to move. Such unwieldy procedures would destroy the primary purpose for which the Interstate Commerce Commission had authorized interchange. Secondly, if administrators were to require the reporting by supplement of the addition and withdrawal of interchange trailers, there would be a constant flow of supplements relating to equipment which might well be out of the state's jurisdiction before application for the original clearance had been received.

In reviewing the problem the Department of Motor Vehicles determined that elimination of continual reporting would be desirable if it

were possible to accomplish without loss of possible revenue and satisfactory clearance could be provided for enforcement purposes.

The department designed a form for use of "interchange trailer" operators which would provide payment of fees for the mileage use of their trailers by California intrastate operators and to provide payment of fees when use of interchange trailers resulted in an overall increase in their trailer fleets for operation in California.

Enforcement agencies are supplied with a listing of the companies qualifying under the above system. Sixteen such companies qualify at this time. The enforcement agencies are given instructions that any of the listed companies may pull any currently licensed trailer from another state provided the "interchange" form has been completed and is carried on the trailer.

The commission was informed that a test had been run on this system which proved to be quite effective and eliminated burdensome paper work and delays thus facilitating interstate movement with no loss of revenue.

The procedure as outlined was approved by the Commission and is now in full operation.

REVENUE

It is interesting to note that in the calendar year 1959, California had 700 active prorate operators who registered 39,614 vehicles and who paid to the State, for the period December 1958 through November 1959 the sum of \$2,769,175.96 in fees. This represents revenue that would not have accrued to the State under the old form of mirror reciprocity had not the prorate system been authorized by the California Legislature.

Attached to this report is the statistical breakdown of the fourth year of operation under the prorate plan.

Respectfully submitted this 1st day of March, 1960.

CALIFORNIA RECIPROCITY COMMISSION
By ROBERT MCCARTHY, *Chairman*

STATISTICAL REPORT OF THE DEPARTMENT OF MOTOR VEHICLES

Results of the Fourth Year of Operation (1959) Under the Uniform Vehicle Registration Proration and Reciprocity Agreement

| | |
|--|------------------|
| Total number of prorate applications filed in 1959_____ | 700 |
| Total number of vehicles under prorate registration in 1959_____ | 39,614 |
| <i>revenue</i> | |
| Total prorate registration revenue in 1959_____ | \$2,769,175.96 * |
| Total prorate registration revenue in 1958_____ | 2,188,476.72 |
| Prorate revenue gain in 1959_____ | 580,699.24 |

* This figure includes the sum of \$1,342.68, fees paid on interchange trailers.

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SECOND REPORT OF THE
SENATE INTERIM COMMITTEE ON COTTON PROBLEMS

to the
1959 SESSION OF THE CALIFORNIA LEGISLATURE

CONCERNING
**THE USE, ADEQUACY AND ADVISABILITY OF COTTON
SEED SCALES IN THE CONTINUED STUDY THEREOF**

MEMBERS OF THE COMMITTEE

ROBERT I. MONTGOMERY, *Chairman*

JAMES A. COBEY, *Vice Chairman*

JOHN J. HOLLISTER

PAT S. McINTURFF, *Counsel*

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LETTER OF TRANSMITTAL

SENATE CHAMBER

SACRAMENTO, CALIFORNIA, June 18, 1959

Hon. Glenn M. Anderson
President of the Senate
State Capitol
Sacramento, California

DEAR SIR: The Senate Interim Committee on Cotton Problems, heretofore rendered its Preliminary Report to the 1957 Session of the California Legislature concerning the use, adequacy and advisability of cotton seed scales. The committee has since that date continued its studies, which have been primarily concerned with proper and appropriate study of cottonseed and the needed revision and/or addition, if any, of legislation.

Transmitted herewith is the Second Report of the Senate Interim Committee on Cotton Problems.

Respectfully submitted,

ROBERT I. MONTGOMERY, Chairman
JAMES A. COBEY, Vice Chairman
JOHN J. HOLLISTER, JR.

I. REVIEW OF PRELIMINARY REPORT OF THE SENATE INTERIM COMMITTEE ON COTTON PROBLEMS

Cotton seed has of and in itself become a valuable byproduct of cotton farming, which, because of its oil factor and other valuable by-products, inclusive of cattle and animal feed, has become of grave concern to the farmer insofar as his being paid therefor.

All seed is purchased from the farmer on the basis of an arbitrary weight formula, which formula does not reflect the actual weight of seed purchased from the farmer by the processors; the processors admitting that the formula is designed with the purpose of creating an overrun, which overrun the industry claims is needed to protect itself as to the deviation in quality factors.

At the outset the committee felt that the only equitable solution would be payment to the farmer based on actual scale weight. The industry at the outset took the position that cotton seed scales could not be made to work and would never be certified as to weight reliability by the California State Department of Agriculture. This problem was alleviated at the outset and it was definitely shown that seed scales could be certified. Thereafter the industry raised the point that quality factors were of such importance that seed scales would not be the answer.

Actually the industry has not been able to show the importance of the quality factors, except in so far as moisture content is concerned; and generally speaking moisture is of relative unimportance in so far as general climatic conditions that prevail in the cotton growing counties.

In view of the committee's investigations and of its own accord, the industry endeavored to arrive at its own supposedly equitable solution, in that at the end of the ginning season all overrun of seed was prorated back to the farmer. The industry has not standardized its procedure of proration back to the farmer. Some of the processors prorate on the basis of their individual gins' overrun, some prorate on the basis of their total overrun, without any reference to area.

In connection with the committee's study, the industry did install certain scales in a few of the gins, for experimental and investigative purposes.

In its Preliminary Report it was the recommendation of this committee that the processors continue with their experimental operation of cotton seed scales so that the importance of quality factors could be determined; and further, it was recommended that the industry use such seed scales as it had installed for the purpose of establishing and maintaining the most equitable formula possible.

II. INVESTIGATION

On Friday, October 18, 1957, the committee held its first hearing following its Preliminary Report to the 1957 Session of the California Legislature.

At this meeting Mr. Gordan Garland, representing certain processors, stated that he felt that seed scales could be used, but by their use we were not finding the solution that the farmers sought. Stating that the weighing of seed does not make for a determination of the amount of moisture or of the quality factors.

General questions were posed at this meeting to the industry concerning their experience with scales during the prior two (2) years.

Kingsburg Cotton Oil Company reported that they had installed a belt type scale at their Welcome Gin, and that at that time and as to that gin no formula was being used and that the farmer was being paid on an actual weight basis. Mr. Willard H. Johnson, representing Kingsburg Cotton Oil Company, further stated that in his opinion while it cut down efficiency from the time standpoint, this scale did produce fairly reasonable results and that the farmer was satisfied by reason of the fact that he could visually see his actual weight. In answer to the question as to whether or not the scale weight at the gin differed from the weight as delivered to the oil mill, Mr. Johnson stated that he believed that in actuality there was a slight overrun.

In regard to queries concerning the quality factor, it was Mr. Garland's position that to satisfy the quality factor it would be necessary to make a laboratory analysis of each trailer load of cotton; that the cost of doing this would be prohibitive and would have to be passed on to the farmer. No answer was elicited as to the importance of the quality factors.

Mr. George Vall, representing the J. G. Boswell Company, reported that during the season they had realized a per bale seed loss of sixteen dollars and 61/100 (\$16.61), based on actual scale weight at the gin as against the weight when delivered to the oil mill. Mr. Vall further stated, that it was their experience that during the same day and under the same conditions different growers would have a different seed turn-out, pointing up the variance in seed weight between different soils and farming practices in the same general area. It was Mr. Vall's position that if seed was to be weighed, it would have to be analyzed from the quality factors.

Mr. McInturff queried, "What I really want you gentlemen to tell me and to show me statistically, if possible, . . . is quality a factor of real importance in cotton seed?" No answer was given to this query.

At this meeting, general discussion was had concerning the gins' present manner of proration and overrun. Following general discussion of the problem facing the committee, the hearing was adjourned.

Mr. Briney, investigator for the committee, continued research and investigation and following are his written reports concerning:

Producers' Cotton Oil Company;
J. G. Boswell Company;
Kingsburg Cotton Oil Company;
California Cotton Oil Company;
San Joaquin Cotton Oil Company, and
S. A. Camp Company, and
Coberly-West Company.

REPORT ON COTTON SEED WEIGHING PRACTICES OF PRODUCERS' COTTON OIL CO.

Conferences with Mr. Ed Fischer, Field Manager of Producers' Cotton Oil Co., and visits to their Sierra Gin and to their Fresno Gin have developed the following facts.

This company has 41 gins at 38 different locations. They are using scales at nine of these gins. Eight of the nine are of the belt type, continuous weighing, scales. One of the nine is a hopper type scale. Seven of these nine scales are located in Kern County where cotton is harvested early, usually before the fall and winter rains affect the water content of the seed, or adversely affect the quality thereof.

This company in giving the growers credit for seed delivered to the gin, where weight is determined by scales, makes a deduction called a provisional deduction, subject to correction by additional credits at the end of the milling season, in case the growers seed is of good quality and the mill does not suffer any underrun of seed greater than the amount of such deduction. If there is poor quality of seed delivered a deduction for such poor quality is made in the number of pounds of seed for which the grower is credited. This deduction of weight to compensate for poor quality of cotton is made according to a schedule which appears posted on the bulletin board at each of the company's gins where scales are used, as will be seen from copies of such rules taken from the bulletin boards at the Fresno Gin which has no scales and the Sierra Gin which does use seed scales, and which rules appear later in this report.

This plan or method of compensating the company for poor quality of seed in terms of reduced pounds of seed paid for rather than reduced purchase price of the seed is admittedly an experiment, but no reason was given for believing that the experiment cannot be made workable and fair to all parties.

In carrying out the foregoing plan of making deductions in pounds for poor quality seed the records are kept separate for each gin and when poor quality of seed shows up in any of the frequent spot checks of quality then each load thereafter coming to the mill from that gin is tested for quality so long as poor quality seed continues to come from that gin. All growers sending cotton to that gin during the time poor quality seed is being delivered to the mill suffer the same deductions for quality. Therefore additional credits given to the growers at the end of the milling season will be the same per ton for all growers at each gin respectively according to the quality history of that gin, and the amount of overrun of seed from that gin. Keep in mind that quality of the seed is reflected in pounds of seed credited to the grower, therefore, of course, the amount of the overrun of seed after applying such deductions will determine the amount of additional credits going to each grower.

It will be seen that since deductions for poor quality are the same for every grower delivering to a certain gin it is conceivable that some farmers suffer more deductions than their quality of seed should demand of them if every grower's seed were tested for quality as he

delivers it to the gin. This company believes, however, that the difference in quality from one field or one grower to the next would be too slight a difference to warrant the additional expense of analyzing the seed from every trailer load of cotton delivered to the gin by each grower, it having been found that the quality of seed from any one district runs very uniform.

At the nine gins where scales are in use to determine the weight of seed delivered to the gin this provisional deduction from such scale weights is made in order to assure that there will be an overrun of seed when weighed at the mill and therefore an additional credit to the grower at the end of the milling season. In case of an under-run there is no way for the gin to collect for the difference in the weights credited to the grower and the actual weights as shown when the seed enters the mill, and the company would have to absorb the loss. It is not practical nor conducive to good will among the growers to bill the growers at the end of the year for an underrun of seed into the mill.

The weight of seed delivered to those gins which do not have seed scales is determined by formula which is expressly fixed at a factor which will assure an overrun of seed for each gin so that there will be additional credits to extend to each grower at the end of the season. This company started the season 1958 with the formula: Weight of lint times 1.55 equals weight of seed, but later in the season it became necessary to reduce this factor to 1.50 as the seed was turning out lighter in weight than anticipated.

Mr. Fischer declined to give out copies of the rules posted on their bulletin boards concerning deductions and method of allowing for poor quality seed, but there was no objection offered to my copying such notices from the bulletin boards, which I did and a copy of such notices is contained herein.

The additional credits to the growers for overrun on seed weights at the end of the season varied from gin to gin for the crop year 1957, but the company prefers not to disclose the exact figures as their formulae are still experimental, unless the committee feels it must have such figures.

I observed the scales at the Sierra Gin of this company in actual operation. A recording device at the pressman's station operated electrically from the scales shows the weight of the cotton seed continuously as the seed goes over the endless belt on the scales so that the figures can be read on the instrument at any time, and when each load of seed cotton has been ginned and the scales have emptied themselves the pressman inserts a card, with identifying numbers on it, into the recording instrument and the weight is stamped on such card which then goes to the office for record purposes.

The gin manager reported that these scales had not required the services of an extra person, as there was always a short wait by the pressmen between bales and the stamping of the weights on a growers card takes only a moment. He did report, however, that there had been some time lost in the scale operation due to occasional breakdown and due to the necessity of keeping the scale mechanism free from lint and dust which is always prevalent in a cotton gin. At times when the scales were shut down a formula was used until they were in operation again.

The following notice was posted on the bulletin board at Sierra Gin.

“Cotton seed will be purchased at this gin under the following conditions:

“The Company will purchase all cotton seed at the price posted in this office at the time of ginning the seed cotton from which it is derived. The cotton seed shall be deemed delivered and sold and title to have passed to the Company at the time the seed cotton enters the gin yard.

“Each grower’s cotton seed will be weighed by the cotton seed scale in operation at this gin as the cotton is ginned. This weight will be known as the seed scale weight. The following adjustments for moisture, foreign matter, and free fatty acids will be made to the seed scale weight:

- “(a) When the baled cotton turnout is 32.00% or more of the total seed cotton on any one gin statement a 1% deduction will be made from the seed scale weight and the grower will receive a provisional credit for the seed scale weight as adjusted.
- “(b) When baled cotton turnout is 31.99% to and including 27.00% of the total seed cotton on any one gin statement, a 2% deduction will be made from the seed scale weight and the grower will receive a provisional credit for the seed scale weight as adjusted.
- “(c) When the baled cotton turnout is 26.99% to and including 22.00% of the total seed cotton on any one gin statement a 3% deduction will be made from the seed scale weight and the grower will receive a provisional credit for the seed scale weight as adjusted.
- “(d) When the baled cotton turnout is 21.99% or lower the total seed cotton on any one gin statement a 4% deduction will be made from the seed scale weight and the grower will receive a provisional credit for the seed scale weight as adjusted.

“Should the cotton seed scales at this gin become inoperative at any time during the ginning season, for any reason, a formula will be used to calculate the weight of prime quality cotton seed to be provisionally credited to the growers. The management of this gin will use a formula that in its judgment, with weather and other factors considered, will calculate as nearly as possible the net weight of prime quality cotton seed in any given amount of seed cotton. This formula will be posted on the bulletin board of this gin during such times as the cotton seed scale is inoperative.

“At the completion of the ginning season Producers’ Cotton Oil Co. will audit the total weight of seed credited to the growers of this gin and this weight will be compared to the total net weight of prime quality cotton seed (as determined by rule 116 Sec. 3 of the National Cotton Seed Products Assn. rules) received from this gin at Producers’ Cotton Oil Co., Fresno Mill. Any excess of net weight prime quality cotton seed received at the mill from this gin over the amount credited to the growers at this gin will be paid for at the average price paid to growers per ton of prime

quality cotton seed during the ginning season, and this amount will be credited to the growers at this gin on a pro rata per bale basis."

"PRODUCERS' COTTON OIL Co.
ED FISCHER, Field Manager."

The following notice was posted on the bulletin Board at the Fresno Gin (no seed scales).

"When the baled cotton turnout is 38.4% or more of the total seed cotton on any one gin statement the weight of the prime quality cotton seed shall be calculated as the difference between the weight of the seed cotton, less a 4% deduction for extraneous matter, and the weight of the baled cotton, (i.e. seed cotton minus 4% minus baled cotton equals prime quality cotton seed). When the turnout of baled cotton is 38.3% or less of the total seed cotton on any one gin statement the weight of the prime quality cotton seed will be calculated as being 1.5 times the weight of the baled cotton (i.e. baled cotton times 1.5 equals prime quality cotton seed).

"This formula is designed to calculate as nearly as possible the net weight of the prime quality cotton seed in any given quantity of seed cotton. Cotton, however, is a variable product and the proportion of prime quality cotton seed to the proportion of lint per pound of seed cotton varies with the amount of moisture, foreign matter and free fatty acid. Accordingly, at the completion of the ginning season, Producers' Cotton Oil Co. will audit the total weight of seed credited to the growers of this gin and this weight will be compared to the total net weight of prime quality cotton seed (as determined by rule #116, Sec. 3 of the National Cotton Seed Products Association Rules) received from this gin at Producers' Cotton Oil Company's Fresno Oil Mill. Any excess of net weight of prime quality cotton seed received at the mill from this gin over the amount credited to the growers at this gin will be paid for at the average price paid to the growers per ton of prime quality cotton seed during the ginning season and this amount will be credited to the growers at this gin on a pro-rata per bale basis."

Rule 116 Section 3 of the National Cotton Seed Products Association reads as follows:

"Determination of Quality Index. The quality index of cottonseed shall be an index of purity and soundness, and shall be determined as follows:

"(a) Prime Quality Cottonseed. Cottonseed that by analysis contains not more than 1.0 percent of foreign matter, not more than 12.0 percent of moisture, and not more than 1.8 percent of free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100."

Dated this fifth day of January, 1959.

PERRY G. BRINEY
Investigator

REPORT ON COTTON SEED WEIGHING PRACTICES OF J. G. BOSWELL COMPANY

The J. G. Boswell Co. have gins at 15 different locations in Tulare, Kings and Kern Counties.

At two of these gins cotton seed scales of the hopper type have been installed but not certified. One at the Porterville Gin was inoperable the greater portion of this season (fall of 1958) and the one at Corcoran can be said to have been operating with only fair success. The latter scale was out of order for 27 percent (27%) of the time this current season, and if such scales had been compulsory it would have cost approximately \$100 per hour for such shutdown time. This company finds that the use of the hopper-type scale required the services of an extra man at a cost of \$2 per hour which means about 25 cents per bale.

Presumably due to the excessively dry weather in the fall of 1958 the weight of seed per bale of ginned cotton in 1958 is 40 to 50 pounds per bale lighter than in 1957.

Due to the unsatisfactory scales at both Porterville and Corcoran no attempt was made to credit the growers at either gin with weights shown by the cotton seed scales at the gin. All growers at all gins were credited with weights according to formula which was changed from time to time as the weights of the seed as shown by the receiving scales at the company's oil mill showed that such formula needed to be changed.

At the beginning of the season (1958) the formula used for all cotton with a turnout of 36 percent or more of lint is the same as previous years, to-wit: Seed cotton less lint less 4 percent of seed cotton equals seed, and for all cotton with a turnout of less than 36 percent the formula used was: Weight of lint cotton times 1.6 equals weight of seed. Due to the fact that the seed as actually weighed in at the oil mill was showing an underrun this factor of 1.6 was changed on October 20 to 1.55. This factor still resulted in an underrun of almost 15 pounds per bale as against 30 pounds under the 1.6 factor. Therefore the factor was reduced to 1.50 on October 30, 1958, and such factor was still in use at the time of the conference on December 5, 1958. On this latter date there remained less than 1 percent of the cotton crop to be harvested.

The company has made no difference in weight credits or in prices because of any difference in the quality of seed during any year. The price was not lowered as the season advanced even in the wet year 1957, although the wet weather no doubt lowered the value of the seed, compared to the dryer seed the growers were delivering at the beginning of the season. The company estimates that the cost of analysis might run as high as \$4 per sample which they consider prohibitive for the relatively small difference in price that the difference in water content or free fatty acid content might make.

Additional credits on seed to the growers are made at the end of each year based on the actual weights of seed which goes across the

scales at the oil mill, and these additional credits are not made separately for each gin based on the records of that gin alone, but such credits are calculated by taking the total aggregate of all seed delivered to the mill apportioning to each grower his proportion according to the weight of seed credited to him by the formula and the total aggregate of all seed credited to all growers by the formula. This method makes it impossible to recognize any difference in weight of seed between one district and another where some have thought that there might be a difference due to climate.

QUERY: Would differentiating between districts result in penalizing the man whose dry climate results in his seed weights being down while the seed weights of the grower in a wetter climate would be heavier without any additional value in the amount of oil contained in the seed?

The way this company handles it, any additional weight due to wet seed goes to the credit of all growers at all 15 gins.

Average additional credits for seed for the crop year 1957 were not obtained, but they have promised to send this information by letter.

Dated this fifth day of January, 1959.

PERRY G. BRINEY
Investigator

REPORT ON COTTON SEED WEIGHING PRACTICES OF KINGSBURG COTTON OIL CO.

Based on conference with Sam Ragan, field manager.

This company operates six (6) gins. At one of these gins the company operates a belt type cotton seed scales. Two of the gins have hopper type scales. At two of the gins up to two-thirds of the seed is stored for varying lengths of time until the oil mill can take the seed. At the other four gins the seed is sent daily to the oil mill and weighed upon delivery. By reason of this daily checking of the weights of seed coming from the gin the company keeps a close check on the accuracy of the formula used at the gins which do not have seed scales and on the accuracy of the seed scales at the gins which have seed scales, and it has been possible to keep the formula as well as the seed scales adjusted so that the error seldom exceeds two or three pounds of seed per bale of cotton; which means two or three pounds per 800 pounds of seed, on the average.

The formula is not usually changed unless a trend of errors continues for 10 to 14 days, as of course, it is planned that there will be an overrun of seed to be paid for by an additional credit at the end of the year. The object of making corrections either in the formula or cotton seed scales at the gin being to keep this overrun to a minimum without resulting in an accidental underrun. In case there is an underrun for the year at one gin the gin suffers the loss, but if there is an overrun each grower at that particular gin is given an additional credit for his share of such overrun based on the number of tons he has been previously credited with, compared with the total tons credited to all growers, at that gin. The records of overruns is kept separately for each of the gins.

It has been the experience of this company that the belt type scales go out of adjustment oftener than the hopper type, causing more loss due to delay at such times. The company estimates that the cost of each shutdown of the gin is \$75 per hour. The principal objection these people have to the use of scales is that it makes just that much more machinery to break down and cause loss through delay in ginning; they feel that such loss, at least up to this time, is greater than the loss due to the investment, maintenance, and cost of operation of the scales. This company has not had an increase in labor costs due to operation of scales and recording the weights of seed for each load of seed cotton, and have not analyzed the cost of any additional record keeping. They do not feel that such record keeping exceeds the work of applying a formula to each load of cotton to arrive at the seed weight. The cost of the power to operate the seed scales is so small it is ignored by this company.

This company has not bothered with checking on quality of cotton seed coming from any of the gins to the oil mill, and of course, therefore has not attempted to make any adjustment on price or weight with the grower on account of any poor quality of seed.

Because this company reports such close checking of their formula with actual weights of seed and the giving of additional credits at the end of the year, examples of what their formula was on any certain dates was not requested.

This company on request furnished Mr. McInturff a letter under date of December 1, 1958, giving the result of their policy of crediting the grower with any overrun of seed and suffering the loss themselves if there is an underrun of seed. From this letter it appears that on the three gins which do not have seed scales the company suffered a loss of \$0.68 per bale because of an underrun of seed in the season 1956-1957, and made additional payments to the growers of \$1.03 per bale for an overrun of seed for the season 1957-1958. This last figure is the average for the three gins.

Dated this fifth day of January, 1959.

PERRY G. BRINEY
Investigator

REPORT OF CONFERENCE AT CALIFORNIA COTTON OIL CO.,
FRESNO, CALIFORNIA

MR. F. A. YEAROUT

January 15, 1959

This corporation runs no gins, but has a cottonseed processing plant in Los Angeles and has a contract with Coberly-West for the processing of all of Coberly-West cottonseed. Any stock ownership between the two companies is denied, and California Cotton Oil Co. is not authorized to speak for Coberly-West as to their experience with scales and formulas. Mr. Yearout refers us to Mr. Roy Dahlson at the Shafter office of Coberly-West. This relationship is mentioned here because Mr. Gordon Garland had informed the secretary of this committee that California Cotton Oil Co. controlled Coberly-West and would speak for them in regard to their experience with seed scales and formulas and it was for that reason that this conference had been scheduled.

However, Mr. Yearout had some knowledge of three privately owned gins at Chowchilla, Firebaugh and Red Top, in each of which gins he owns an interest, though each is a separate entity and under separate management. He reported briefly on these three gins that each of them has cottonseed scales, but that none of these three scales is used as a basis for accounting to the grower for his seed delivered to the gin. The scales are not deemed accurate enough and so formulas are used at each of said three gins and if there is an overrun of seed as determined by the seed weights at the oil mill then additional credits are given the farmer at the end of the year, all growers at each gin share at the same rate of additional credits per bale as all other growers at that gin.

He reports that for the year 1957 there was an underrun of seed at the Red Top Gin and of course no additional credits to the growers and no attempt was made to collect from the growers for underrun of seed delivered to the oil mill; the ginning company absorbing the loss. For the year 1957 the gins at Firebaugh and at Chowchilla had slight overruns of seed delivered to the mill and both of those gins remitted to each grower for his share of such overruns. The exact figures he did not have.

Respectfully submitted,

PERRY G. BRINEY

REPORT OF CONFERENCE WITH MR. L. R. GUDGEL AT
SAN JOAQUIN COTTON OIL CO. COTTONSEED
MILL AT CHOWCHILLA, CALIFORNIA

January 21, 1959

This mill serves forty-eight (48) gins in the northern part of the San Joaquin Valley. At nine (9) of these gins seed scales (certified) are used for accounting to growers for weight of seed purchased from such growers, except when scales are temporarily out of service being repaired. During such periods of repair a formula is used.

At the other thirty-nine (39) gins a formula is used to compute the weight of the seed and the same formula is used at each of such gins. Records are not kept separately on these thirty-nine (39) gins, but the entire overrun of seed from all thirty-nine (39) gins is accounted for by sending to each grower his pro rata share of such overrun of seed so that each grower at each gin receives the same amount per bale for such overrun of seed; such accounting being made at the end of the season after all seed has been processed.

This company prefers to calculate credits for overrun of seed for the entire thirty-nine (39) gins rather than for each one separately, lest differences, however slight, cause dissatisfaction among growers at some gins or among some growers who gin at different gins (among the thirty-nine (39) mentioned) because of having large operations and farms handy to different gins.

These gins used the same formula as was reported by Mr. Vinson on January 16, 1959, in reporting for the same company's mill in Bakersfield. However, these gins never ginned any cotton with a turn-out as low as thirty percent (30%) while using the formula in which thirty percent (30%) turnout was a basis for calculations.

Respectfully submitted,

PERRY G. BRINEY

REPORT OF CONFERENCE WITH MR. MATT VINSON AT
SAN JOAQUIN COTTON OIL CO. COTTON SEED
MILL AT BAKERSFIELD, CALIFORNIA

January 16, 1959

This particular seed processing mill serves twenty-one (21) gins, at three (3) of which they now operate seed scales.

One scale was installed at Deer Creek Gin near Terra Bella for the season 1955. It is of hopper type and was the only type available at the time. This scale was very unsatisfactory for the first two seasons it was in operation, although it was certified each year before use. Therefore formulas were depended on solely those two years, additional credits being given each grower at the end of the year based on the overrun at the mill in excess of the weights credited to the growers by the formula.

In the year 1957 this scale worked generally satisfactorily except for one breakdown during which the formula was used. In the year 1958 there was no breakdown and the scale weights were used to credit the farmer for seed ginned at that gin.

Because of the delicate nature of the adjustments on this scale and the frequency of its getting out of adjustment an extra man was required during the peak season to keep it operating accurately.

In 1957 and 1958 seasons the scale weights were treated as accurate and final and no comparison was made with the weights of the seed as it entered the mill, so far as the mill superintendent, Mr. Vinson, knows. If a comparison of the scale weights with the weights at the mill is desired, a letter to the main office of the company in Los Angeles is necessary. There have never been any complaints from growers at any time at the gins using scales concerning weights of seed.

The other two scales are of the belt type and were not used until the 1958 season. They are installed at the Lake View Gin and the Sunset Gin (Kern County, southwest of Bakersfield). Both of these scales were certified by the Department of Weights and Measures for the full season 1958, and gave no trouble mechanically, except that each of these two scales had a similar breakdown (at different times) which required about one week for repairs to stripped gears. Accuracy checks always showed them working properly. During the breakdown formula was used to determine weight of seed ginned.

The weights as shown by these two scales were used in 1958 as a basis for finally accounting to the grower and no additional credits are planned to be given after the end of the season whether there is an overrun or an underrun of seed. In fact there is no indication from this conference that the company intends to calculate whether there be or be not an overrun since they state that the scales are certified and all checks show they are accurate and there is no more reason to think that they, instead of the scales at the mill, are inaccurate in case a difference should show up.

The company was pleased that these two belt type scales required no extra man to keep them in adjustment as is the case with the hopper type scale near Terra Bella.

This company seems to feel that scales are not serving their purpose if the company must still compare the weights from the certified seed scales at the gin with the weights of the seed going over the certified truck scales at the mill and then (if the scales at the mill indicate there is an overrun) assume that the seed scales at the gin are in error and proceed to calculate additional credits supposedly due each grower and draw and mail out hundreds of checks to the growers for such sums. If they must live up to such a rule they feel that the expense of the seed scales at the gin has accomplished nothing and that such a practice gives no advantage over the use of a formula at the gin purposely calculated to give an overrun at the mill and an additional credit to the grower at the end of the year.

At the other eighteen (18) gins in the southern end of the San Joaquin Valley owned by this company there are no seed scales and the weight of the cotton seed ginned at those gins is determined by formula and at the end of the year any overrun is compensated for by additional credits to the growers based on the weight of the seed entering the mill. The overrun was not calculated for each gin but only for all the eighteen (18) gins without seed scales and the additional credits calculated for each grower on the assumption that every grower at every gin had the same amount of overrun per bale.

The formula used for 1958 was as follows:

Until November 3, 1958, the formula was: If turnout is more than thirty-six percent (36%) lint then four percent (4%) of seed cotton presumed to be trash, and balance seed.

If turnout thirty percent (30%) to thirty-six percent (36%) then seed equals lint times 1.6.

If turnout below thirty percent (30%) then seed equals lint times 1.5.

After November 3 formula was simply: Seed equals lint times 1.45 for all cotton ginned regardless of turnout.

This company has another mill at Chowchilla, serving forty-eight (48) gins.

See report of conference with Mr. Gudgel, January 21, 1959.

Respectfully submitted.

PERRY G. BRINEY

REPORT OF CONFERENCE WITH J. J. MURRAY AND J. L. GUNN
AT S. A. CAMP CO., OFFICE AT CAWELLO

January 29, 1959

The S. A. Camp Co. mill at Cawello serves 15 gins; 12 of them being located in Kern County and three of them in Tulare County.

No seed scales are used at any of these 15 gins.

The formula or formulas used in 1957 were not available at this office. The formulas used in 1958 were as follows:

Until 9-23-58: Lint \times 1.55 equals seed.

9-23-58 to 10-2-58: If turnout 37.6 percent or more, trash assumed to be 4 percent of seed cotton; therefore seed equals seed cotton minus percent of turnout minus 4 percent.

If turnout 37.5 percent or below, lint \times 1.55 equals seed.

10-2-58 to 10-10-58: Same as last above except factor 1.50 used instead of the factor 1.55.

10-10-58 to 10-15-58: If turnout 37.5 to 33 percent, use factor of 1.45 in last formula above instead of 1.55.

If turnout 32.9 percent to 30 percent, use factor 1.4 instead of 1.45.

After 10-15-58: Lint \times 1.4 equals seed on all cotton ginned regardless of turnout.

By making weekly checks on the matter of overrun or underrun of seed weights at the mill and making changes in their formula accordingly as often as needed, and by charging the grower only \$1.09 per hundred pounds of seed cotton for ginning his cotton where other gins charge up to \$1.20 this company feels that they are making a fair agreement with the grower in agreeing to make frequent changes in formula to reflect as nearly as possible the actual weights of the grower's seed and both parties accept such formula weights as final. No further accounting is made on account of any underrun or overrun of seed at the mill as compared to the weights credited on the formula basis.

These gentlemen report that they do not know the amount of overrun or underrun of seed for the season 1957; the 1958 milling season will not end before late next summer. They do not know whether the difference between formula weights and total mill scale weights were ever determined at all for 1957, but they will ask for a report from their records department on this subject if the Senate Interim Committee on Cotton Problems desires and requests it.

Respectfully submitted,

PERRY G. BRINEY

REPORT OF CONFERENCE WITH MR. RAY DAHLSON AT
COBERLY-WEST CO., OFFICE AT SHAFTER

January 29, 1959

Coberly-West Co., own and operate 10 cotton gins, 6 of them in Kern County and 4 of them in Tulare County. They have no cotton seed mill of their own but contract all of their seed to processors, recently to California Cotton Oil Co., with a processing mill in Los Angeles.

Seed is purchased from growers on a formula basis of weights and no recalculation of credits is made at the end of the year or any other time based on weight of seed going over the scales at the processing mill.

Each gin weighs its first truckload of seed at the beginning of the season in order to give basis for a formula to start the season, and thereafter weights of seed coming from the cotton brought to each gin are checked practically weekly and each gin works out its own formula and makes changes therein from time to time as their scale weight checks indicate that the formula is varying from scale weight.

The Company feels this is fair in view of the fact that they buy the seed as prime cotton seed and the price is based on the value of prime cotton seed although much of the time it is not prime seed, especially after the fall rains start, and the company is then the loser on such downgrading of seed, and such loss has never been passed on to the grower. They feel that by making such frequent checks on their formula they keep it so close to the actual weights of the seed that the contract to buy the seed on this formula basis is completely fair to the grower.

Mr. Dahlson agreed to send us a written report on formulas used at each gin this year, and an indication of how close the formula came to the exact weights as shown by the scale weights of the seed entering the mill.

Respectfully submitted,

PERRY G. BRINEY

Pursuant to the request of the committee the following letter was sent to the Department of Agriculture for the states of New Mexico, Mississippi, North Carolina, Texas, Alabama, Louisiana, and Georgia.

November 13, 1958

Department of Agriculture

GENTLEMEN: California has been investigating the use, adequacy and advisability of cottonseed scales insofar as the growers and processors of cotton are concerned here in California. This investigation is being carried out by a special committee of the California State Senate and as counsel for this committee I have been instructed to query other states in regard to this question. For your information and to give a broader picture of the problems that this committee is concerning itself with in regard to cottonseed scales, I enclose a copy of the preliminary report of the committee.

In general I should like to ascertain what, if anything, has transpired in your state or if any problem does exist in regard to the use of cottonseed scales. More specifically:

1. Are cottonseed scales required of the processor by any legislative authority? If so, what is the nature and extent of the statute and are any adjustments made in the actual weight of seed insofar as quality factors?

2. Are any of the processors using scales on a voluntary basis? If so, is the price paid to the growers based on the actual weight? If scales are not in use, how is the weight of the seed determined and what is the basis of its purchase by the processor from the grower and what is the prevailing market price of seed in your state?

3. Is there any conflict between the grower and processor relevant to cottonseed?

Any information or suggestions that you might have relevant to the problem facing this committee would be sincerely appreciated and I realize that my specific questions might have no answer in your state, therefore, if no specifics are available a general statement would be most helpful.

The next meeting of our committee is set for December 10, 1958; if possible, I would appreciate a reply at your earliest possible convenience.

Sincerely yours,

PAT S. McINTURFF
Counsel for Senate Interim Committee
on Cotton Problems

PSMcI/ccd

In response thereto the following letters were elicited from : Arizona, Mississippi, Alabama, Texas, Louisiana, and Georgia.

ARIZONA COMMISSION OF AGRICULTURE AND HORTICULTURE
OFFICE OF THE STATE ENTOMOLOGIST
P.O. Box 6246, PHOENIX, ARIZ., November 28, 1958

MR. PAT S. MCINTURFF
*Counsel for Senate Interim Committee
on Cotton Problems*

DEAR MR. MCINTURFF: This will acknowledge your letter of November 13. I will attempt to answer your questions in order.

With reference to your question No. 1, the State of Arizona has no law which requires the use of cottonseed scales to be used for the payment of farmers for cottonseed.

With reference to your question No. 2, there are a number of ginners who are using scales on a voluntary basis. I am told that where scales are used the farmers are being paid for the actual weight of the seed. Where scales are not in use, there are a number of different formulas for determining the weight of seed. The most generally used formula is as follows:

The farmer is paid for an amount of seed two-thirds the weight of the cotton lint. This is an advanced payment. An adjustment is made after the end of the ginning season, based on the seed delivered to oil mills, and this adjustment is prorated to the farmer without regard to the quality of his seed. The prevailing market price for cottonseed is \$43 per ton.

With reference to your question No. 3, there appears to be no conflict at the present time between growers and ginners relative to the amount or price of cottonseed. I am advised by two of the larger processors that they have had no complaints since the current formula was put into effect. The Arizona Cotton Growers Association have advised me that there is no conflict at the present time.

I hope that this will answer your questions.

Very sincerely,

W. T. MENDENHALL
State Entomologist

DEPARTMENT OF AGRICULTURE AND COMMERCE
STATE OF MISSISSIPPI
JACKSON, November 24, 1958

MR. PAT S. MCINTURFF
*Counsel for Senate Interim Committee
on Cotton Problems*

DEAR MR. MCINTURFF: This will acknowledge receipt of your letter of November 13 with reference to laws governing the weighing of cottonseed.

This is to advise that all gins are required to have scales. The custom in Mississippi is to weigh the gross and then, after the cotton is ginned, to re-weigh the bale of cotton deducting a percentage for dirt,

trash and waste, leaving the remainder for the net weight of cottonseed. There is no law requiring the weighing of cottonseed, as such.

Trusting this is the information you desire, I am

Sincerely,

SI CORLEY
Commissioner

STATE OF ALABAMA
DEPARTMENT OF AGRICULTURE AND INDUSTRIES
MONTGOMERY 1, ALABAMA, December 3, 1958

MR. PAT S. MCINTURFF
*Counsel for Senate Interim Committee
on Cotton Problems*

DEAR SIR: With reference to your inquiry of November 13, we give the following information:

1. Are cottonseed scales required of the processor by any Legislative authority? No.
2. Are any of the processors using scales on a voluntary basis? Yes, prices vary.
3. Is there any conflict between the grower and processor relevant to cottonseed? None to my knowledge.

Yours very truly,

J. L. SLAUGHTER, Chief
Division Gins and Warehouses
Weights and Measures

TEXAS DEPARTMENT OF AGRICULTURE
AUSTIN, December 22, 1958

MR. PAT S. MCINTURFF
*Counsel for Senate Interim Committee
on Cotton Problems*

DEAR MR. MCINTURFF: This will acknowledge your recent letter relative to regulations on cottonseed scales and to advise that we do not have any regulation requiring the use of cottonseed scales in Texas, however, most of the gins do have an automatic type scale to catch the seed, due to the fact that these scales are automatic, we do not seal them. I have not heard of any conflict between the grower and the processor relevant to cottonseed.

If we may be of further service to you at any time, please contact this office.

Yours very truly,

RUSSELL KOONTZ, Chief
Weights and Measures

LOUISIANA DEPARTMENT OF AGRICULTURE
AND IMMIGRATION

BATON ROUGE 1, December 5, 1958

MR. PAT S. MCINTURFF

*Counsel for Senate Interim Committee
on Cotton Problems*

DEAR MR. MCINTURFF: This will acknowledge receipt of your letter of November 13, 1958, requesting information on the use of cottonseed scales in Louisiana.

Cottonseed scales are not required of processors by any legislative act; however, approximately 95 percent of our processors have installed and are using scales on a voluntary basis. The prices paid to growers are based on actual weights with adjustments for quality being made.

Cottonseed from the current crop are of very poor quality due to very heavy rains during the late growing season and at present are going at \$35 per ton.

There has been no conflict between growers and processors relevant to cottonseed.

I trust the above information will be of some assistance to you and, if we can be of further service, please call on us.

Sincerely yours,

L. C. MCKENZIE
Liaison Officer

DEPARTMENT OF AGRICULTURE
ATLANTA 3, GEORGIA, December 8, 1958

MR. PAT S. MCINTURFF, *Consultant**Senate Interim Committee
on Cotton Problems*

DEAR MR. MCINTURFF: I am glad to know that you are making a thorough investigation concerning the use, adequacy, and advisability of cottonseed scales in so far as the growers and processors of cotton are concerned. I regret to advise that very little has been done in our state in connection with the use of cottonseed scales. I am listing below the answers to your questions:

1. No.
2. Yes. (Seed hopper scales.) Processors paid the growers during the past year from \$40 to \$55 per ton for seed.
3. There is no general conflict between growers and processors, except growers feel that processors are not paying enough for seed.

The price for seed is set by the processors.

Yours truly,

PHIL CAMPBELL

The committee felt that it would be constructive and educational to ascertain from the co-operative gins what their procedure was in regard to handling of cottonseed and the following letter was sent to all co-operative gins, namely: Arvin Co-op Gin, Caruthers Cooperative Gin, Inc., Central Valley Growers Gin, Inc., Central Valley Cooperative, Clovis Sanger Cooperative Gin, Inc., Dos Palos Cooperative Gin, Earlimart Cooperative Gin, Inc., Farmers Cooperative Gin, Inc., Growers Cooperative Gin, Inc., Island Cooperative Gin, Inc., Kaweah Delta Cooperatives Gins, Kern Delta Cooperative Gin, Laton Cooperative Gin, Madera Cooperative Gin, Inc., McFarland Cooperative Gin, Inc., Minturn Cooperative Gin, Inc., Raisin City Cooperative Gin, Richland Cooperative Gin, Inc., Rosedale Cooperative Gin, Inc., Sequoia Cooperative Gin, Inc., Stratford Cooperative Gin, Inc., Visalia Cooperative Cotton Gin, Westside Farmers Cooperative Gin, Inc., Eastcardale Cooperative Gin, Inc., Kerman Cooperative Gin, Inc., Kern Lake Cooperative Gin, and Tule River Cooperative Gin, Inc.

SENATE INTERIM COMMITTEE ON COTTON PROBLEMS

December 10, 1958

GENTLEMEN: The committee, as a part of its studies, has been and is now faced with the following queries:

1. What is your respective procedure for seed payments to members?
2. What has been the schedule of payment to members during the past four (4) seasons?
3. What proportion of your ginning is for nonmembers?
4. Are nonmembers given the same payments, inclusive of credits, as members?
5. Are any of your gins presently operating seed scales? If so, the location of these gins and what has been your general conclusion concerning seed scales?
6. Is seed credit determined by formula? If by formula, we would appreciate the various formulae used by you during the past four (4) seasons and the date of formula changes?
7. In determining the price to your members, are quality factors taken into consideration? If so, what factors and how do they affect the members' rate?

Your co-operation in this matter would be most sincerely appreciated and any additional thoughts or ideas that you may wish to propose to the committee would be appreciated and you may rest assured that they will be presented to the committee.

It will be necessary that we render our report covering the past two (2) years' study during the next Legislative session, therefore your prompt attention to this matter would be most helpful.

Sincerely yours,

SENATE INTERIM COMMITTEE ON COTTON PROBLEMS
By: PAT S. MCINTURFF, Consultant

In reply to this, answers were elicited from :

Kerman Co-op Gin and Whse., Inc.
Central Valley Growers Gin
Dos Palos Cooperative Gin, Inc.
Central Valley Cooperative

KERMAN CO-OP GIN AND WHSE., INC.
KERMAN, CALIFORNIA, December 17, 1958

*Senate Interim Committee
on Cotton Problems*

GENTLEMEN: In reply to your inquiry dated Dec. 10, 1958. Our procedure for seed payment to the growers is by gin statement and the ginning charge is deducted from the seed credit and the balance either paid the grower or credited to his account.

Our gin is for the use of only members. We do not operate a seed scale, our seed credit is reached by the formula method. For the past four seasons the only formula used was 1.5 times the lint equaled the seed. On or about Nov. 15 we adopted the factor of 1.4 as our formula and it is the figure now used.

Yours very truly,

DAVID BEASLEY, Ofc. Mgr.

CENTRAL VALLEY GROWERS GIN
TIPTON, CALIFORNIA, December 15, 1958

ROBERT I. MONTGOMERY, *Chairman*
*Senate Interim Committee on
Cotton Problems*

GENTLEMEN: In answer to your inquiry per your letter of December 10, 1958, regarding your study on seed payments, we submit the following information:

1. See explanation below.
2. Proration by pounds of lint.
3. None.
4. None.
5. No.
6. No.
7. No.

The Central Valley Growers Gin is a farmer-owned co-operative association serving 65 members in the Tipton area and our operation is unlike a commercial gin.

We have no nonmembers, and we make no gin statements. Cottonseed from our ginning is marketed through Ranchers Cotton Oil, Fresno, a co-operative oil mill.

At the end of our fiscal year, after all operating expenses are paid and the returns from Ranchers Cotton Oil is received, the difference is allocated to our members, based on the pro rata share of lint ginned per member.

I hope this will be helpful in compiling your report.

Yours very truly,

CENTRAL VALLEY GROWERS GIN
KENNOR P. WHITE, Manager

DOS PALOS COOPERATIVE GIN, INC.
DOS PALOS, CALIFORNIA, March 30, 1959

Senate Interim Committee on Cotton Problems

Attention: MR. PAT S. McINTURFF

GENTLEMEN: This association credits its members and likewise any nonmembers we may serve for seed on a formula basis equal to that used by other gins in this area. In the event there is seed produced in excess of that credited according to the formula, the growers are credited accordingly. The price is the same as that paid at all the gins in the San Joaquin Valley. In addition to this, the association refunds to its members and nonmembers the difference between the sales price of the seed products and the cost of operating the oil mill. Quality factors are reflected in this figure.

Less than two percent of our ginning is for nonmembers. However, we treat nonmembers in the same beneficial method as members.

We have only one gin at present and do not operate seed scales.

It appears to me that any minor benefit resulting from the use of seed scales would be more than offset by the extra cost of installing and operating seed scales and record keeping. In any gin, the farmer would pay the cost involved either directly or indirectly.

We feel our system is practically 100 percent equitable to all the members. To attain 100 percent equity would be impossible.

We are sorry for the delay in furnishing you with this information.

Very truly yours,

DICK L. GROEFSEMA
Manager

CENTRAL VALLEY COOPERATIVE
HANFORD, CALIFORNIA, January 5, 1959

Senate Interim Committee on Cotton Problems

Attention: MR. PAT S. McINTURFF, Consultant

GENTLEMEN: The answers to the questions contained in your letter of December 10, 1958, are listed below.

1. All of the seed produced at our gin is milled co-operatively which means that all of the proceeds from the end products less the processing costs are returned to us and we in turn pay these proceeds to our grower members.
2. See attached.
3. None.
4. If we ginned any nonmember cotton, such nonmember would receive the same treatment as a member.
5. No.
6. Yes. See attached.
7. Settlement with the member is not made on an individual quality basis, however the price received by us to be paid to the grower is based on quality. Samples are taken of each truckload of seed delivered to the oil mill. Once a week these samples are made into a composite sample and a laboratory analysis is made of this com-

posite sample. Such factors as oil content, moisture content and trash are taken into consideration in determining quality.

Yours very truly,

CENTRAL VALLEY COOPERATIVE, INC.
R. W. NOLAND, Manager

CENTRAL VALLEY COOPERATIVE
HANFORD, CALIFORNIA, December 19, 1958

To: *Senate Interim Committee on Cotton Problems*

Reference: Letter dated December 10, 1958

Question No. 2

Schedule of payment on seed to all growers ginning at CVC was as follows:

1954-55 season:

| | |
|---|-------------|
| Payment at time of ginning | \$54.00 |
| First progress payment | 5.00 |
| Second progress payment | 4.5833 |
| Total cash payment | \$63.5833 |
| Held in reserve and certificated to growers | 8.454427 |
| Total per ton (cash and reserve) | \$72.037727 |
| Approximate valley average | \$59.25 |

1955-56 season:

| | |
|---|---------------|
| Payment at time of ginning | \$42.00 |
| First progress payment | 5.00 |
| Second progress payment | 5.5473 |
| Third progress payment | 7.309887 |
| Total cash payment | \$59.857187 |
| Held in reserve and certificated to growers | 8.32101305 |
| Total per ton (cash and reserve) | \$68.17820005 |
| Approximate valley average | \$46.20 |

1956-57 season:

| | |
|---|---------------|
| Payment at time of ginning | \$45.00 |
| First progress payment | 10.00 |
| Second progress payment | 5.065673 |
| Third progress payment | 5.065673 |
| Fourth progress payment | 4.79524 |
| Total cash payment | \$69.926586 |
| Held in reserve and certificated to growers | 7.59850168 |
| Total per ton (cash and reserve) | \$77.52508768 |
| Approximate valley average | \$63.32 |

1957-58 season :

| | |
|--|-------------|
| Payment at time of ginning..... | \$45.00 |
| First progress payment..... | 5.00 |
| Second progress payment..... | 5.222219 |
| Third progress payment..... | 3.719033 |
| <hr/> | |
| Total cash payment..... | \$58.941252 |
| Held in reserve and certificated to growers..... | 7.833325 |
| <hr/> | |
| Total per ton (cash and reserve)..... | \$66.774577 |
| <hr/> | |
| Approximate valley average..... | \$52.83 |

1958-59 season :

This season is incomplete as of this date.

Question No. 6

Seed credit (pounds) is determined by formula

1954-55 season through present 1958-59 season, same formula used each and every season, namely :

If turnout percentage exceeds 36.00 percent foreign matter is figured at 4 percent of seed cotton weight, result—seed cotton weight less foreign matter weight less bale weight, balance is seed weight.

If turnout percentage is 35.99 percent or less, seed weight is arrived at by multiplying bale weight times 1.5.

Various informal meetings of the committee have been held during the past two (2) years, all pointed toward the solution of the cotton-seed problem.

At a meeting of the committee held January 21, 1959, in Sacramento, it was developed by Senators Cobey and Hollister that one of the chief complaints of the farmers is the high price that they are paying for meal and cake for cattle feed, in contrast to the low price that they are receiving for their seed—cotton cake and meal being in great demand for cattle feed and being relatively short in supply. At this meeting it was also developed that all of the quality factors brought forward by the industry as their objection to cottonseed scales were relevant only to quality factors involved in oil for human consumption, that is, with the exception of moisture. That in view of the cattle feed potential of cottonseed cake and meal and the price thereof, it was felt that these quality factors were of no real importance and not material.

At this meeting Senator Hollister felt and stated that one solution would be the placing of the gins and oil mills under the Public Utilities Commission.

During the 1959 Session, Senate Bills Nos. 1145 and 1146 were introduced, both pointed toward a balancing of the equities and towards giving the farmer a fair accounting of his cotton seed from the processors.

Said bills incorporated herein.

SENATE BILL NO. 1145

Introduced by Senators Hollister, Cobey, and Montgomery

April 6, 1959

Referred to Committee on Agriculture

An act to amend Section 1299.18 of, and to add Section 1299.19.1 to, the Agricultural Code, relating to the ginning of cotton.

The people of the State of California do enact as follows:

SECTION 1. Section 1299.18 of the Agricultural Code is amended to read:

1299.18. Definitions. As used in this chapter:

(a) The term "person" includes any individual, firm, association, partnership or corporation.

(b) The term "producer" designates any person engaged in the business of growing or producing any farm product.

LEGISLATIVE COUNSEL'S DIGEST

S.B. 1145, as introduced, Hollister (Agr.). Cotton ginning.

Amends Sec. 1299.18, adds Sec. 1299.19.1, Ag. C.

Defines "cotton gin." Includes operators of cotton gins in the definition of "processor" of farm products for licensing purposes.

Requires, where cotton is ginned for the general public, that it be weighed by a public weighmaster prior to ginning and that the seed be so weighed after ginning.

(c) The term "farm products" includes all agricultural, horticultural, viticultural and vegetable products of the soil, honey and beeswax, flaxseed and cottonseed, but shall not include timber and timber products, milk and milk products.

(d) The term "processor" means any person engaged in the business of processing, or manufacturing farm products, who solicits, buys, contracts to buy, or otherwise takes title to or possession or control of, farm products from the producer thereof for the purpose of processing or manufacturing the same and selling, reselling or redelivering the same in dried, canned, extracted, fermented, distilled, frozen, or other preserved or processed form.

The term "processor" includes any person or corporation maintaining and operating a cotton gin, regardless of whether or not such person or corporation buys or takes title to the cotton ginned.

Retail merchants having a fixed or established place of business in this State shall not be included within the term "processor"; provided, however, that such exemption shall apply only to retail merchants who do not also sell at wholesale farm products processed or manufactured by them.

(e) The term "agent" designates any person who on behalf of any processor contracts for or solicits any farm product from a producer thereof, or who negotiates the purchase of any farm product on behalf of any processor.

(f) The term "lender" includes any individual, firm, association, partnership or corporation who advances new value to a processor.

(g) The term "new value" includes new advances or loans, whether in money or other property, made by a lender to a processor, but shall not be construed to include extensions or renewals of existing obligations of the processor, nor obligations substituted for such existing obligations.

(h) The term "cotton gin" means a gin operated and maintained for the purpose of ginning cotton of the general public or of persons other than the owners or stockholders of the corporation maintaining and operating such gin. "Cotton gin" does not include a gin maintained and operated by a nonprofit, co-operative association or corporation organized for the purpose of engaging in any activity in connection with the production, marketing, or selling of the agricultural products of its members or shareholders.

SEC. 2. Section 1299.19.1 is added to said code, to read:

1299.19.1. In all cases where cotton is ginned for the general public in a cotton gin the cotton shall be weighed prior to ginning by a public weighmaster, licensed under the laws of this State, and after ginning the cottonseeds resulting from the ginning of such cotton shall be weighed by such public weighmaster, and a certificate as to such weights shall be issued by him to the producer of the cotton and the charges for the ginning, or any settlement made with producer as to such cotton or cottonseed, shall be based upon the weight shown thereby.

SENATE BILL No. 1146

Introduced by Senators Hollister, Cobey, and Montgomery

April 6, 1959

Referred to Committee on Agriculture

An act to add Chapter 4 (commencing at Section 2800) to Part 2 of Division 1 of the Public Utilities Code, relating to regulating cotton gins and the ginning of cotton.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 4. COTTON GINS

Article 1. General Provisions and Definitions

2800. The Legislature declares that cotton gins maintained and operated for the purpose of ginning cotton of the general public, or maintained and operated for the purpose of ginning cotton not produced and owned by the person or persons, or the stockholders of the corporation, maintaining and operating such gin, are public utilities and the business of operating such gins for the purpose of ginning cotton is clothed with a public interest and subject to public regulation and control for the public welfare as a public utility.

2801. Unless the context otherwise requires, the definitions and general provisions set forth in this article govern the construction of this chapter.

2802. "Cotton gin" means a gin maintained and operated for the purpose of ginning cotton of the general public, or of persons other than the person or persons or the stockholders of the corporation maintaining and operating such gin. "Cotton gin" does not include a gin maintained and operated for the purpose of ginning cotton produced and owned by the person or persons, or the stockholders of the corporation, maintaining and operating such gin, and does not include a gin maintained and operated by a nonprofit, co-operative association or corporation organized for the purpose of engaging in any activity

LEGISLATIVE COUNSEL'S DIGEST

S.B. 1146, as introduced, Hollister (Agr.). Cotton gins.

Adds Ch. 4 (commencing at Sec. 2800), Pt. 2, Div. 1, P. U. C.

Declares that the business of operating cotton gins for the public is a public utility.

Provides that cotton gins are subject to the jurisdiction and control of the Public Utilities Commission, and requires operators of cotton gins to obtain from the commission a certificate of public convenience and necessity.

Excepts cotton gins operated for ginning of owner's cotton and gins operated by nonprofit, co-operative associations or corporations.

in connection with the production, marketing or selling of the agricultural products of its members or shareholders.

2803. "Corporation," includes a corporation, a company, an association, and a joint stock association.

2804. "Person" includes an individual, a firm, and a copartnership.

Article 2. Scope of Regulation

2825. Every cotton gin doing business in this State is a public utility, and is subject to the provisions of Part 1 (commencing at Section 201) of Division 1 and to the jurisdiction, control, and regulation of the commission.

2826. No person or corporation shall maintain and operate a cotton gin without first having obtained a certificate of public convenience and necessity as provided in Part 1 (commencing at Section 201) of Division 1.

2827. The commission shall have the same power and be charged with the duty of regulating and controlling cotton gins in all matters relating to the performance of public duties and the charges therefor and correcting abuses and preventing unjust discrimination and extortion, as is exercised by the commission as to public utilities pursuant to Part 1 (commencing at Section 201) of Division 1, including the power to issue certificates of convenience and necessity, fix rates, rules, charges, and regulations to be observed by the person or persons or corporation operating cotton gins, and the affording of all reasonable conveniences, facilities and services.

At the present stage the industry has tentatively, but without any definite commitment on their part, indicated a willingness to install cottonseed scales and to pay the farmer on the basis of actual weight.

III. CONCLUSIONS AND RECOMMENDATIONS

It is the conclusion of this committee that cottonseed scales are feasible and are perfected to the point that the installation and operation of seed scales will be for the best interest of the farmer.

Further, it is the conclusion of this committee that unless cottonseed scales are installed by the industry, other regulatory legislation will be necessary to protect the best interest of the cotton farmer.

It would be the recommendation of this committee that appropriate legislation be enacted committing the industry to the use of cottonseed scales. That any such legislation should allow a reasonable time for the installation thereof, or in the alternative that appropriate legislation be enacted wherein and whereby existing authority, either by way of the Public Utilities Commission or the Department of Agriculture, would supervise and establish that the farmer was not receiving a fair and equitable return on his cottonseed.

Respectfully submitted,

ROBERT I. MONTGOMERY
JAMES A. COBEY
JOHN J. HOLLISTER

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EXAMINATION OF 22nd DISTRICT AGRICULTURAL ASSOCIATION

A REPORT OF THE SENATE FACT FINDING COMMITTEE ON GOVERNMENTAL ADMINISTRATION

MEMBERS OF THE COMMITTEE

STANLEY ARNOLD, *Chairman*

GEORGE MILLER, JR., *Vice Chairman*

RANDOLPH COLLIER

HUGH P. DONNELLY

ALAN SHORT

ROBERT I. MONTGOMERY

LUTHER E. GIBSON

STAFF

EARL G. WATERS, *Executive Officer*

ALBERT LATIMER, *Staff Member*

ALBERT E. SHEETS, *Special Counsel*

COMMITTEE LETTER OF TRANSMITTAL

SACRAMENTO 14, CALIFORNIA, March 10, 1960

Mr. President and Gentlemen of the Senate:

Your Senate Fact Finding Committee on Governmental Administration has examined the records and affairs of the 22nd District Agricultural Association and submits herewith its report of findings and recommendations.

Respectfully submitted,

STANLEY ARNOLD, *Chairman*

CHAIRMAN'S LETTER OF TRANSMITTAL

SACRAMENTO 14, CALIFORNIA, December 8, 1959

THE HONORABLE HUGO FISHER, *State Senator*
Bank of America Building
San Diego, California

DEAR SENATOR FISHER: The examination of the management of the 22nd District Agricultural Association conducted by this committee, as a result of your request, has been concluded and I am transmitting to you a copy of the report of the examination made by the committee staff and the recommendations adopted by the committee.

The examination was conducted with the full co-operation and assistance of the Governor, Director of Finance and the Attorney General.

The committee will follow through on the recommendations and the Director of Finance has indicated to me that he will endeavor to carry out the specific recommendations applicable to the administration.

Yours truly,

STANLEY ARNOLD

STAFF REPORT ON MANAGEMENT EXAMINATION OF 22nd AGRICULTURAL DISTRICT

November 30, 1959

*The Honorable Stanley Arnold, Chairman
and members of the Senate Fact-Finding
Committee on Governmental Administration
State Capitol, Sacramento, California*

DEAR SENATOR ARNOLD: An examination of the books, minutes and other records of the 22nd District Agricultural Association has been made over a period of weeks commencing in September, 1959. The following findings, conclusions and recommendations are submitted by staff.

EARL G. WATERS
Executive Officer

I. HISTORY OF 22ND AGRICULTURAL DISTRICT

The 22nd Agricultural District comprising San Diego County was created in 1889 but due to a long period of inactivity the history which is concerned with today's operation commences with the district's reactivation in 1933.

First allocations from the Fairs and Exposition Fund were made in 1935 and in 1936 the present site near Del Mar was purchased. In the same year the district entered into a lease agreement with Del Mar Turf Club and the real activity of the 22nd District commences at this point.

II. FINANCIAL STATUS OF 22ND DISTRICT

With the initial allotment made by Fairs and Expositions the 22nd District has received up to and including the January 1959 allocation, a total of \$1,115,235.86 under Section 92 of the Agriculture Code. (Exhibit A.)

Additionally the 22nd District has received under Section 19626 of the Business and Professions Code, allotments for capital outlay totaling \$1,468,017. (Exhibit B.)

Commencing in 1937 the district has received annual rental payments from Del Mar Turf Club in various amounts each year up to and including 1959 excepting 1942, 1943 and 1944.

Additional income has been derived from activities in connection with the operation of the fair and some interim activities.

From these sources the district has invested in capital assets a total of \$5,673,084 as of July 31, 1959.

The principal investment has been the track and facilities appurtenant thereto.

The total land investment, for example, is only \$35,868 including the initial purchase of 184 acres for \$25,000 in 1936. Additional acreages of 26, 26.2 and 5 make a total of 241.2 acres.

Aside from the track including the grandstand, administrative offices, jockey quarters, barns and stables, the fair structures are limited to four exhibit buildings, two warehouses, and an administration building.

The Del Mar Fair, or Southern California Exposition as it is called, ranks fourth in paid admission of all fairs in the State being exceeded by the Los Angeles County Fair, California State Fair and the 21st District Fair at Fresno.

The Audits Division annual report for 1958 provides the following information regarding the 22nd District's standing as compared to all other district and county fairs, excluding the State, Los Angeles County, National Orange Show, Cloverdale, 48th District Los Angeles, and 1-A District, San Francisco.

Assets as of December 31, 1958, \$6,029,532 making it the largest from the standpoint of total and also from the standpoints of assets represented by local funds (\$4,031,747) and state funds (\$1,775,785).

Operational revenues \$784,246 and operational expenditures of \$993,416. Largest in both categories.

Revenues from admissions were the largest (\$150,976) but number of paid admissions (190,668) placed it behind Fresno.

Industrial and commercial space sold was (17,761 square feet) seventh place while revenues from concessions (\$116,600) was second.

Exhibit entry fees (\$7,054) ranked first as did premiums totaling \$98,042.

The number of senior division entries (9,662) was third but entries in the FFA, 4-H, and junior divisions were far below many other fairs.

While horse show entries of 3,294 were first the Santa Barbara Horse Show drew 16 times the admissions and twice the \$33,506 revenues reported for the 22nd District Show. (Del Mar Horse Show is free. Audit does not accurately reflect attendance.)

Nonfair revenues of \$407,684 were by far the largest of any of the fairs.

As of July 31, 1959, the district had \$205,510 in cash with \$44,743 and \$16,999 in accounts receivable and \$84,374 in the Capital Outlay Fund of the State Treasury. Obligations as of this date were \$53,896.

III. REPORT OF ACCOUNTING

The 22nd District Fair is a giant among the state-supported district and county fairs.

The official records and books maintained by the district are:

1. General entry ledger;
2. Check register;
3. Payroll time book;
4. Board minute book.

Receipts and disbursements were entered in the general entry ledger.

Cost accounting was nonexistent although some attempts had been made to show cost distribution for the horse show and San Diego County exhibit. In neither case did the books accurately reflect costs.

Prior to 1959 all checks were signed by the manager alone. No co-signer appears on checks issued before 1959 despite Department of Finance regulations and despite the fact that in 1958 in excess of \$900,000 of district funds were disbursed.

The minutes of the board reflected approval of bills to be paid at each meeting and the bills so approved were listed in an attachment to the minutes.

A comparison of the general entry ledger and check register with the minute book disclosed an apparent regular practice of the manager of paying bills in the month preceding submission to the board for its approval of payment.

Further comparisons disclosed payments running into thousands of dollars had been made by the manager but did not appear on the lists submitted to the board for approval. Examples were payments in 1958 to Helman Smith, a contractor, totaling \$37,421.35 only \$745.83 of which was reflected in the minutes as approved, and payments to P. G. Tholl, a contractor, totaling \$59,773.18 only \$1,512.26 showing in the minutes as approved. Both of these amounts exceeded the amounts of contracts which had been approved by the board.

Further examination disclosed other instances wherein contractors had been paid in excess of the amount approved by the board.

In view of these discrepancies a general examination of the records of the 22nd District was undertaken covering the period commencing January 1, 1955, to October 1, 1959, and a more detailed examination for the years 1957 and 1958 and that portion of 1959 to October 1.

IV. GENERAL EXAMINATION FINDINGS

A general examination disclosed the major disbursements of the 22nd District fell into two categories: Fair expenditures and nonfair expenditures.

The fair expenditures included administration, maintenance and general operations, temporary structures, attendance operations, publicity, premiums, horse show, and attractions.

It is concluded, in the absence of a cost accounting system, that considerable charges have been made against the fair operations which result not from normal fair costs but are due to the 22nd District's role as a landlord to the Del Mar Turf Club. This conclusion is supported by comparisons with operations of other fairs.

Inasmuch as the 21st District Fair in Fresno draws a slightly larger number of paid admissions a comparison with expenditures in these areas with the 21st District for the year 1958 disclosed that in each of the categories the 22nd District expenditures were considerably higher and the aggregate was \$244,000 greater.

The Fresno District does operate pari-mutuel racing during its fair and its accounts reflect an operating expenditure of \$155,369 for the 1958 year for this activity against a revenue of \$243,538. This does not reflect concession earnings at the track. Also some of the costs of the track operation appear to be hidden.

The 22nd District does not operate racing during its fair but it owns a race track which is leased to the Del Mar Turf Club. The 22nd District Fair precedes the Del Mar Race meet by not more than 30 days. Because the lease turns over the entire 22nd District property to the Del Mar Turf Club all concessions and exhibits must be set up tem-

porarily. Thus, before each race meet the entire fair grounds including concession areas, exhibit buildings, and flower show area must be cleared. Because of the short time between the end of the fair and the opening of racing much of this removal and clearance requires overtime wages. It is apparent that these annual setting-up and clearance costs are largely responsible for the high costs of maintenance and operation (\$146,719 to Fresno's \$97,624) temporary structures (\$76,425 to Fresno's \$13,610), and attendance operations (\$74,239 to Fresno's \$36,070), and that many of the costs included in these categories should in fact have been charged against the cost of operating a rental property. This also was the case in the high cost of attractions wherein the 22nd District expended \$54,280 to Fresno's \$22,836 because the district must erect and then remove whatever stages are used in the grandstand and other entertainment areas.

Inasmuch as the examination was not directed to those things which were a matter of judgment in the operation of a fair, but rather to the determination of whether proper procedures and practices were being followed in the handling of the fair's business, no attempt was made to evaluate the premium, exhibit, horse show, or attractions expenditures.

However, in the area of fair operations one phase, the advertising of the fair, did attract attention due to the wide disbursement of display advertising.

In excess of \$15,000 was spent in newspaper display advertising, a considerable portion of which was placed in areas well beyond the normal trading area of San Diego County.

Letters of verification were sent to a sampling of the outer region newspapers to determine whether the district books correctly reflected the amount paid and to determine whether or not an agency commission had been paid.

Returns from more than 20 newspapers established no agency commissions had been paid but one overpayment of \$0.80, a bookkeeping error, was disclosed.

For the most part then, the examination centered around the nonfair or interim operation expenditures.

In this major category principal expenditures were for materials and supplies, contractual work, including repairs, maintenance and construction, the Del Mar track and the San Diego County exhibit.

In the purchasing category of materials and supplies the major items were electrical, plumbing, printing, and lumber and builders supplies.

Substantial purchases in each of these fields were made without the approval of the Department of Finance and without following the Purchasing Statute of 1955 and without channeling through its sister agency the Purchasing Division of the Department of Finance.

As a result, in most instances the district failed to receive the usual trade discounts offered the State by suppliers and vendors. In a few cases the district did receive the normal cash discount for prompt payment.

In the field of contractual work the examination disclosed irregularities as follows:

1. Contracts exceeded that which could legally be accomplished without advertising for bids.
2. Overpayments were made to some contractors.

3. Progress payments not provided for in contracts were made.
4. Payment was made for services without benefit of contract.

Having established an absence of compliance with state law and Department of Finance regulations attention was centered upon details for the years 1957, 1958 and the first nine months of 1959.

V. LUMBER PURCHASES

Lumber and building materials purchased during 1957, 1958 and 1959 totalled \$56,957.87 with purchases in 1958 totaling \$31,455.30, \$22,859.90 of which was purchased from one firm.

All purchases were made without Department of Finance approval and many purchases exceeded the amount which may be purchased without bid. No system of delivery accountability was apparent and more than 21 individuals, including contractors, signed for lumber supplies.

An examination of the invoices of the firm from which the major portion of the purchases were made failed to reflect usual trade discounts.

More than 100,000 board feet of lumber was included in the 1958 purchases, 86,296 of which was assorted lumber and the balance was in plywood panels.

Invoices were checked for the years 1957, 1958 and 1959 and the total amount of lumber was listed by size.

A physical inspection of the fairgrounds was then made in company with three employees of the 22nd District. It appeared the lumber as billed had been delivered to the fairgrounds and had not subsequently been diverted.

An inspection of the principal supplier's establishment disclosed it to be a substantial and well established firm doing business on a large scale at prices generally considered competitive in the San Diego area. Comparison of the prices charged the 22nd District for lumber with prices available to the State through the purchasing agent reflected favorably.

Prices for other supplies however were higher than could have been obtained by the purchasing division through quantity purchases. But since the 22nd District was not following regulations of the Department of Finance or even good business practice but simply buying over the counter on a day-to-day needs basis the prices charged were not excessive.

VI. PRINTING PURCHASES

Annual printing bills for the years 1957, 1958, and 1959 averaged \$10,000. The bulk of this printing was represented in the costs of producing three premium lists and one horse show program. This printing was all done by one firm. Only two bids were received for the printing of three premium books in 1959 the cost of which was \$4,352.66. No bids were received and no contract was written for the printing of the horse show program at a cost of \$3,236.

The premium books contained advertising and a service agreement disclosed that the firm, with whom the district contracted for the sale of the advertising at a commission of 50 percent, was connected with the firm which did the printing.

No proper accountability of the advertising sales was maintained. No advertising sales contracts between the advertisers and the district were on file and no receipt books for advertising collections were in the possession of the district. The district record of advertising sales was simply a typewritten list of advertisers with amounts paid submitted by the advertising sales firm.

Comparison of the space sold and the rates charged as reported by the advertising sales agent disclosed variances in the space rates. One full page ad was given to the American Horse Show Association, Inc. at no charge. All other ads were paid. In the 1958 books, Allen Ross received free advertising. In neither year was board sanction given for the free advertising.

Letters of verification were sent to a sampling of the advertisers and more than 15 responses established the amounts reported by the salesman, who was paid directly by the advertisers were correct.

The contract price for the premium books was tested by obtaining estimates from one of the largest quality printers in San Diego. The prices charged the district by the contracting printer were competitive with the estimate obtained.

The advertising sold in the premium books totaled \$3,002.50 of which the district received \$1,489.26. Inasmuch as the premium books contained some 55 pages of advertising it is estimated the increased cost of the books by reason of the advertising was \$800 making a net of less than \$700 for the district as a result of advertising sales.

On the horse show program 1,325 copies were printed to be sold at a cost of \$1 per copy. No advertising was contained. Cost of printing was \$3,236.

The remainder of the printing for the year was scattered among many printers in various amounts ranging from \$10.98 to \$401.93. There was no evidence of estimates having been obtained prior to order placement.

VII. ELECTRICAL SUPPLIES

Electrical supplies purchased during the three-year period averaged slightly under \$10,000 annually.

All purchases were made without Department of Finance approval and without following purchasing procedures as established by the department and without complying with the purchasing statute.

Most of the supplies were purchased from General Electric and an examination of the invoices disclosed the usual state discount was not obtained. Single order in 1957, 1958 and 1959 purchased of General Electric totaled \$5,242.61, \$2,968.78, and \$2,002.59 respectively. Other electrical supply single purchases exceeded \$1,000.

Purchases from Warner Electric were made only during 1958 exceeded \$3,500, and those in 1959 exceeded \$2,200, for which there were no bids and no approvals by the department.

As in the purchase of lumber it appears purchases were made on a day-to-day need basis with no effort to estimate annual needs and buy in quantity through the purchasing division.

Inasmuch as the delivery control was no better in the receipt of electrical supplies than in other commodities the only method of verification was to compare supply purchases with labor costs. On this

basis it would appear the quantities of material purchased were in line with what could have been used, petty pilfering ignored.

Since most of the purchases were made from such established firms as G.E. and Graybar the matter of personal rebates was not explored.

VIII. PLUMBING SUPPLIES

Plumbing supplies, like other materials, were purchased on a day-to-day need basis. It did not appear that usual state discounts were obtained. Inasmuch as the annual purchases in this field averaged well under \$5,000 and purchases were made from three major suppliers in the San Diego area no attempt was made to verify the purchases.

IX. NURSERY SUPPLIES

For the most part single purchases from nurseries were a minor item but in 1958 two purchases were made, one in the amount of \$4,783.95 and another in the amount of \$2,003.16, and in 1959 another in the amount of \$1,248. In the absence of cost accounting neither these purchases nor others, which ran the annual nursery purchases to an average in excess of \$5,000, could be attributed to the actual purpose. From the invoices it was apparent some of the purchases were in connection with the flower show but the extent to which district funds were expended for nursery purchased for the beautification of the race track or other purposes was undetermined.

X. OTHER PURCHASES

The pattern of purchases was generally to purchase on a day-to-day need without Department of Finance approval and without compliance with state law.

Three recent purchases which became the center of considerable controversy among the board members were:

1. The most unusual purchase of an Indian relic collection from John M. Sheedy of Del Mar for \$35,000. This purchase was made without any independent appraisals, without Department of Finance approval, and without any negotiation as to price. The price paid was the asking price which Mr. Sheedy had advertised and offered a commission for the sale. A letter of inquiry directed to Mr. Sheedy to ascertain if a commission had been paid resulted in an answer to the negative from Mr. Sheedy. The minutes show the board approved the purchase.

If the circumstances surrounding this purchase were unusual, the purpose of the purchase is even more bewildering. The function of a district fair would not seem to include the operation of a museum.

The 22nd District neither has a proper place to display this collection, nor a proper place to store the collection. Nor does it have personnel to properly maintain such a collection.

Finally, the collection does not appear to have any historical connection with San Diego County but rather is a collection of Indian Relics gathered from other areas of the country.

2. The purchase of a kiddie ride known as "showboat" which consisted of a 25-foot replica of a river boat together with a plastic tank approximately 100 feet square for \$13,920. The minutes reflect the

board approved purchase of this attraction. The judgment exercised in this decision might be questioned inasmuch as the district for several years had been contracting regularly with a concessionnaire to whom they had given exclusive rights for all such attractions during the fair, and who was prompt to protest the infringement of the contract.

In any event the conflict with the concessionnaire was avoided when the plastic tank developed irreparable leaks.

The transactions in connection with the purchase appear to have been in order and the controversy would seem to be over soundness of judgment.

3. The purchase of trophies and ribbons for the 1959 horse show which is covered in a subsequent section dealing entirely with the horse show operations.

XI. CONTRACTS

Construction projects were accomplished in two ways in the 22nd District. In most instances where money was provided by the State through allocations for capital outlay the established procedures were followed. But where 22nd District funds were used established procedures were often ignored and statutory requirements were wilfully, deliberately and continually evaded.

A review of the contracts establishes a constant pattern of evasion of the law requiring all construction contracts in excess of \$10,000 to be advertised for bid. Contract after contract was written with the provision "not to exceed \$9,999.90." In almost all instances an examination of the books disclosed that payments to the contractor had then been made in excess of \$10,000.

Furthermore, these contracts were approved by the Department of Finance which should have been alerted by the constant flow of such contracts. But it appears the department may have been a party to this evasion or did not pay attention to what it approved since one particular contract with Sim J. Harris Co. dated November 14, 1958, and approved by T. H. Mugford for the paving of 60,000 square feet read:

STATE AGREES: To pay the contractor \$10,490 for the 50,000 square feet of paving. In the event the actual footage should be reduced or increased, the amount of this agreement will be reduced by \$.155 or increased by \$.16 per square foot. *The total amount of the contract will not exceed \$9,990.12.* (Emphasis added.)

An examination of the minutes disclosed the board had received no bids under \$10,000. At a subsequent meeting the board approved a contract with Harris with the proviso that it was not to exceed the \$9,990.12 figure. An examination of the books disclosed two payments were made in succeeding months to Harris on this contract. One in the amount of \$9,990.12 and one in the amount of \$632.

In most instances it appeared representative bids were obtained on construction contracts despite the fact the projects were not advertised. No tests were conducted to determine whether or not contractors lived up to specifications, other than sampling interviews with successful and unsuccessful contractors to explore the possibility of personal rebates. No evidence of such was found and the consensus was that the accepted bids were too low to permit such possibility, provided of course the specifications were met. A further review of major contracts disclosed that no one firm had any exclusive on the district work, which further removed the possibility of favoritism even though the law was not conformed to. However, in most cases payments beyond those called for in

the contracts were made, presumably due to change orders, but the minutes reflect no board approval on changes.

In the smaller contracts however the procedure followed was so loose that it is not possible to determine factually the transactions. Specifically, in the case of electrical work a service contract was awarded to one firm which definitely was not the low bidder although the minutes reflect the board believed it to be. This was due to the fact the bid was simply to perform work as directed by the fair manager without any other specifications. The bid was in the form of hourly rates to be charged for a foreman, journeymen, and helpers, and discount on materials. The successful bidder was higher than the lowest bidder on all points excepting the hourly charge for helpers. Union regulations require five journeymen for each helper so this item was of small importance.

In the case of the plumbing and painting contract services there were no service agreements or bids in evidence. Work was performed as directed by the management and bills were submitted irregularly.

Another irregularity in connection with contracts was the decision by the manager, without board approval, to make progress payments to contractors notwithstanding no provision for such was contained in the contracts.

In most instances such payments were made in connection with contracts paid out of the 22nd District Funds but in the case of a contract with Helman M. Smith for the construction of horse barns in the amount of \$14,665.30, which was to be paid out of State Treasury capital outlay funds allocated to the District, about 20 percent of the contract was paid out of district funds in progress payments. At this point the Division of Fairs and Expositions called upon the district to furnish a list of payments made, pointing out the contract made no provision for progress payments.

Since then the State has paid the balance of the contract and is presently in the process of correcting the records wherein unauthorized progress payments were made.

XII. MINOR IRREGULARITIES

The management had a history of slipshod practices, some of which had been the subject of the Division of Audits and Division of Fairs Exposition correspondence throughout the period under examination commencing in January 1, 1955. Among these were:

1. Failure to file proper expense vouchers.
2. Failure to keep long distance telephone records.
3. Inadequate control of ticket sales.
4. Failure to maintain vacation and sick leave records of employees.
5. Failure to pay sales tax.
6. Inadequate controls over entry fee collections.
7. Circumvention of state regulations regarding employment of personnel.
8. Poor handling of district cash used for change.
9. Co-mingling of bank accounts.
10. Excessive overtime payments to certain employees.

XIII. HORSE SHOW

In connection with the horse show the 22nd District has, over a period of years contracted with Allen Ross to manage the show. Ross performs similarly for a number of other fairs. The record shows he is most active and ambitious.

The 22nd District Horse Show, is, from the standpoint of entries, the largest in the United States with more than 3,000 entries in 1959. Revenues from entry and stake fees in 1958 were \$24,478 compared with the Santa Barbara Horse Show fees of \$23,649.

In 1959 the district entered into two contracts for the management of the horse show. One with Allen Ross, Ltd., in the amount of \$1,750 to provide Allen Ross as manager and announcer of the show and in this connection "to provide own secretarial help." The contract was approved by Finance and was to be paid "upon completion of the final performance and all other performances to the satisfaction of the Manager of the 22nd District Agricultural Association. * * *"

The same provision for satisfactory performance was contained in a second contract for horse show management with Tanbark and Turf, Inc., a corporation under the control of Allen Ross, which agreed to furnish the public address system and a stable manager, gateman, ring steward, ring master and ring clerk.

Payments have been made by the 22nd District in fulfillment of the contracts.

Payrolls of the 22nd District reflect payments of \$357 to Harriet Landrum and \$226.50 to Kathleen Bush, both secretaries employed in connection with the horse show.

Mr. Ross stated that he did furnish secretarial help as provided in the contract and did in fact provide Helen Landrum for the period June 1 to June 15, to perform secretarial services for which he paid her \$250. It was subsequent to June 14 that Mrs. Landrum went to work for the district. Upon the cessation of her employment, he stated, he engaged Evelyn Bogue as secretary from June 15 to about July 7 for which he said he paid her \$650. Mr. Ross was unable to produce checks in evidence of the payments or records such as withholding tax or unemployment insurance tax payments. He stated payments to both parties were in cash.

It is Mr. Ross' position that he did furnish the secretarial help called for in the contract and that the district, of its own volition, determined it would provide additional secretarial assistance beyond that called for in the contract at its own expense. He further contends he did perform under his contract to the satisfaction of the manager as evidenced by the fact he was paid in full upon the completion of the horse show.

Payrolls of the district further reflect payments to John Castenado of \$769.04 for performing the function of gateman and of \$707.67 to John Traylor for performing the function of stable manager.

Mr. Ross stated Castenado was part of the ring crew and did the physical job of opening and closing the gate but that he (Ross) performed the function of gateman from his position as announcer in the ring from which he (by a separate announcing system to the stables) called up the entries in their proper order. He said he also performed the function of stable manager which is to receive the entries and assign them to their stables in accordance with the preferences of the

owners. Traylor, he stated, as an employee of the district, did not perform the functions of stable manager but rather did act as stable caretaker among other services performed by him for the district. The district management verified Traylor's activities included work in connection with parking and other nonhorse show functions.

Mr. Ross also stated he acted as ring clerk and that he hired a Fred Simpson for \$150 to perform the functions of ring steward and ring-master. As in the case of the first contract he contends his payment in full is evidence he did perform to the satisfaction of the district manager.

It is apparent the contracts were not appropriately drafted to properly cover the services to be performed by Mr. Ross. The contracts adopted the form of contracts entered into with Mr. Ross several years before despite the fact the horse show in number of entries had grown tremendously in size.

Nevertheless the contract Mr. Ross signed as president of Tanbark and Turf, Inc., clearly implied he would employ five persons to-wit:

"* * * to furnish stable-manager, gateman, ring steward, ring master and ring clerk for all horse show events; * * *"

Furthermore, since he was already under contract to provide himself to fill two jobs, that of manager and of announcer of the horse show, it would seem unlikely that the board in approving the second contract expected Mr. Ross to fill three more jobs.

The mitigating facts are that in a service contract the objective is the fulfillment of a specific function. If the end result is satisfactory the means of accomplishment are usually not in consideration. If the contractor found he could produce a better show by personally undertaking certain specific jobs it would seem within his province to do so. Still, considering this show had more entries than any horse show in the United States, it is most remarkable that Mr. Ross could have performed satisfactorily as manager while tied down to the announcing job, let alone perform three other functions in addition.

Insofar as the State is concerned at this point it appears that the then manager of the 22nd District having made a finding of satisfactory performance, the payments made under the two contracts were in accordance with the terms of the contracts which had been approved both by the board and by the Department of Finance.

But it should be recognized that the manager and Mr. Ross, by the method of using contracts in the form approved by the Department of Finance in prior years and which in this instance did not accurately describe the scope of service to be performed, evaded the scrutiny of the department.

Further, the submission to the board of directors contracts, which apparently the manager and Mr. Ross realized did not accurately cover either the work to be performed or the full costs of the services to be provided precluded the possibility of the board considering the services of any other persons for the simple reason that Mr. Ross was placed in the advantageous position of appearing to be able to provide services far below that which anyone else could bid.

As manager of the horse show Mr. Ross ascertained which judges were available for the show and made recommendations to the board for those to be engaged.

In private business Mr. Ross operates a retail store which merchandises, among other things, riding habits and trappings. Patrons of his store exhibit at some of the shows which Mr. Ross manages.

As manager of the show he solicited in the name of the district entries and contributors of money for the purchase of trophies. The money was donated to the 22nd District. As manager of the show he selected the trophies and the prize ribbons, subject to the approval of the district manager and the board.

The ribbons and trophies were purchased from the Studio City Trophy and Ribbon Co. without bids and without Department of Finance approval. The bill for the trophies and ribbons was \$5,940.65. Studio City Trophy and Ribbon Company is owned solely by Allen Ross. The 22nd District Board has withheld payment.

From the records of Studio City Trophy Co. the district was billed \$2,654.60 for trophies. Invoices from this company's supplier were examined and from those it was determined that a markup in excess of the normal jewelers' 100 percent retail markup had been applied. Mr. Ross explained that his cost included the purchase of medallions (or Southern California Exposition metal seals) which were then attached to each of the trophies.

An examination of the cost of the seals then made evident that to the cost of the individual trophy had been added the unit cost of the seals after which the retail 100 percent markup had been applied. In the case of trophies described as "goblets" for which the district was billed \$6.50 per unit the cost to the Studio City Trophy Company was \$2.40 to which was then added \$0.86 for medallions before applying the markup. From this, no discount had been given to the district although Mr. Ross said he had absorbed the cost of affixing the medallions to the trophy (about \$0.40 per unit) and the cost of engraving each trophy (about \$1 per unit).

He reported a total cost to him for the trophies of \$1,456.88 against a billing to the district of \$2,654.60.

Of the total bill \$2,169.13 was for ribbons furnished in connection with the horse show. Mr. Ross stated the standard retail markup of 100 percent was used. He added that in connection with furnishing the ribbons he did all of the clerical work which involved separating 1,615 ribbons into approximately 250 classes, making out individual cards for each ribbon and individual class sheets for each class, packaging the ribbons, cards and sheets so that each would be in the order of events.

Some fairs employ clerical staff for this function. In this instance, if Mr. Ross did perform the clerical work in connection with preparing the ribbons, cards and class sheets for award, the savings to the district was probably more than the amount of profit realized by Mr. Ross on the sale of the ribbons.

Properly, this work should have been included in his contract as manager, payment provided in the contract, and the ribbons should have been purchased in accordance with Department of Finance regulations and state law.

The balance of the bill submitted for ribbons and trophies is for medals for dairy products, exhibitor numbers for the horse show and ribbons for the flower show. It is assumed the same markup was used

by Mr. Ross for these other supplies. No representation was made by him that any work was performed in connection with these latter purchases.

On the surface the audit report for the 1959 horse show reflects revenues of \$35,840 as against expenditures of \$20,984. But this does not include premiums which were \$27,033, nor does it include other proper charges against the show which have not been assigned to the show due to the district's absence of cost accounting. One director has asserted the show cost \$70,000.

XIV. SAN DIEGO COUNTY EXHIBIT

For a number of years the district, under an agreement with the San Diego County Board of Supervisors, has undertaken the responsibility of installing exhibits advertising San Diego County at various fairs and at the State Capitol. The San Diego County Board of Supervisors appropriates funds for this purpose. Other revenue for this venture is from exhibit prize money at the various fairs, and indirectly the benefit of reciprocal exhibits at the 22nd District from the other fairs.

The district employs one person to be in charge of the program and various personnel are from time to time engaged to assist, including maintenance personnel and others charged on the payroll of the district to other functions.

It appeared that the project was treated as more or less an orphan by the district with no direct supervision by the manager and no specific policy or direction provided by the board.

As in the case of the other operations of the district the actual financial status of this project could not be determined in the absence of cost accounting, but an examination of the books together with questioning of employees of the fair indicated the project was being operated at a loss.

XV. INSURANCE

In February 1959, the board purchased loss of rental income insurance coverage in the amount of \$370,000, for a premium of \$2,958, which was a divided risk among a number of companies. The policies were issued in February 1959 with a January 1, 1959, effective date through Percy H. Goodwin Company, a San Diego insurance brokerage firm, which then assigned certain of the policies to several agents among which was a policy in the amount of \$40,000 at a premium of \$324.40 issued by National American Insurance Co., assigned to North Coast Investment Company, 217 15th Street, Del Mar, California. The president, one of six directors, with a reported one-seventh interest in the North Coast Investment Company is Paul T. Mannen. Paul T. Mannen, until August 1, 1959, was the secretary-manager of the 22nd District Agricultural Association. Estimated commission on the premium of the policy assigned to North Coast Investment Company was \$18.66.

Because the purchase of this insurance was not authorized by the Department of Finance the policies were canceled out as of October 1959 upon orders of Finance.

Under state laws and regulations state agencies may not purchase insurance of any kind, all such purchases being made for the agencies by the Department of Finance.

The records of the district reflected other insurance had, in the past, been purchased without interference from Finance.

Inquiries into the insurance program of the Operating Company, sublessee of the race track owned by the 22nd District, disclosed that among the insurance policies carried by the tenants were six business interruption policies for coverage of \$619,850 and one fire insurance policy in the amount of \$20,000, the total premiums being \$12,783.17, representing a portion of the tenants total insurance program. The agent for these policies is Willis H. Fletcher Company, San Diego. Estimated commission on the policies is \$935.90. Willis H. Fletcher is, and has been since April 1956, a director of the 22nd Agricultural District. The amount of the commission represents an infinitesimal segment of the Willis H. Fletcher Company annual business.

Mr. Fletcher is the son of the late Senator Ed Fletcher, who served in the California Legislature from 1935 to 1947, and has substantial interests in San Diego County.

Mr. Fletcher stated his insurance sales to the Del Mar Turf Club and subsequently to the Operating Company predated by many years his appointment to the 22nd District Board. He further stated his sales have decreased since becoming a member of the board. The minutes of the board reflect that Mr. Fletcher has voted, on occasions, adverse to the interests of the Operating Company.

XVI. DEL MAR RACE TRACK

In 1936, the 22nd District obtained a WPA grant of \$500,666, for the construction of a race track, grandstand and fair exhibit buildings.

These funds, together with some district money derived from state allocations and money advanced by the Del Mar Turf Club were expended for the construction of the Del Mar Race Track. Subsequent capital investments have been made in the race track up to and including the current year in an undetermined amount.

No accurate record of capital outlay has been maintained by the district. The Division of Audits reports the assets of the district as represented by capital assets at \$5,673,084. Inasmuch as the only capital improvements other than the grandstand, barns and other track facilities, are four exhibit buildings, two small warehouses, and a modest administration building, the major investment is represented by the track. There is a question as to whether the capital asset figure of the audit report accurately reflects the total investment. Here again, the absence of cost accounting makes it impossible to accurately determine the purposes for which money has been expended.

Concurrent with its embarkation upon a program to develop a race track, the 22nd District entered into a lease agreement with the Del Mar Turf Club, a California corporation.

This leasing arrangement has become most complicated due in part to legislation enacted after the initial lease and to a series of transactions by the leaseholder.

The pertinent actions chronologically are:

1. Franchise agreement signed December 8, 1936, wherein for the sum of \$100,000 the 22nd District grants to Del Mar Turf Club a 10-year lease. Rental is established at 12½ percent of the Turf Club's commission on the parimutuel pool. Option is given for an additional 10 years *upon the completion* of the first 10-year term providing the Turf Club meets any other offers and providing the Legislature does not in the meantime deprive the district of the right to enter into such a lease. 22nd District retains the right to conduct racing during its fair. Provided the lease would become null and void if *for any reason* Del Mar Turf Club is unable to obtain from the California Horse Racing Board a license to conduct its race meeting.
2. Entered into a supplemental agreement on January 22, 1937, and a number of subsequent agreements up to and including one on July 11, 1938, wherein the district *borrowed* a total of \$491,663.83 from the Turf Club for capital improvements to be repaid out of rentals due or *moneys appropriated by the Legislature*.
3. The Legislature in 1938 enacted a provision prohibiting agricultural associations from leasing race tracks for running races. (Section 87, Agricultural Code.)
4. The Horse Racing Board denied a license to Del Mar Turf Club in 1942, 1943 and 1944.
5. Entered in a memorandum of agreement February 5, 1945, wherein the district granted an extension of the 1936 lease to December 31, 1949, to make up for the three lost war years (despite the fact the lease would appear to have become null and void by its own terms) for the sum of \$50,000 which was to be expended by the Turf Club on "permanent" but unspecified improvements. At the same time the district, for the sum of \$100,000, granted an extension of 10 years to December 31, 1959. No provision for option to renew after December 31, 1959 was contained.
6. On August 17, 1953, with six years remaining on the 1945 lease, the district entered into an agreement for which no payment was made to the district for an extension of the lease from December 31, 1959, to December 31, 1969. The district agreed to pay the Turf Club \$35,000 per year to maintain the track. The district agreed to expend \$800,000 on capital improvements to the track which was to be loaned to it by the Turf Club and deducted from rental payments. For the purpose of a faster recapture of this loan the Turf Club agreed to increase the district share of the track's commission of the parimutuel pool in 1954 to 19½ percent and 15 percent in 1955 and then return to the 12½ percent thereafter. At the same time the district agreed to permit the Turf Club to deduct 40 percent of its rental for repayment of the loan in 1954 and 35 percent in 1955 and 25 percent thereafter until the loan was fully repaid.
7. An agreement entered into between Del Mar Turf Club and Operating Company, a California corporation which has issued 20 shares of stock at \$1,000 per share, to sublet the Del Mar Turf Club leaseholding for a rental of 90 percent of its net profit, with a minimum of \$250,000 per year.
8. Assignment and grant deed entered into by Del Mar Turf Club and Boys Incorporated of America, a Delaware Corporation, whereby for the sum of \$250,000 Del Mar Turf Club assigned its interests in the 22nd District lease and subsequent interests in the sublease with Operating Company. The \$250,000 was to be paid as follows: \$5,000 down and the balance, bearing 6 percent interest, over a period of 11 years. In addition, Del Mar Turf Club reserved unto itself the right to rentals for a period of 10 years or until it received the sum of \$1,780,000 plus 6 percent interest on the declining balance.
9. On August 3, 1954, Del Mar Turf Club filed with the Secretary of State a notice that an election to dissolve had been held.
10. In 1956, Mr. Louis Heinzer, administrative advisor for the Department of Finance wrote to the 22nd District questioning the ability of the district to enter into any further agreements with tenants.

The problems connected with this lease insofar as the validity of the initial and subsequent agreements are concerned are dealt with in a separate memorandum attached as an appendix to this memorandum.

The rental agreement was a most unusual one insofar as commercial leases in that it accorded the landlord a percentage of only one phase of the business to be conducted, namely the parimutuel betting of which the district would receive $12\frac{1}{2}$ percent of the track commission on the parimutuel pool. Not only did it not provide for a percentage to the landlord for all other activities commencing with parking admissions through food and liquor concessions, turf club memberships, reserved seats and programs and any and all other revenue-producing operations, but it specifically prohibited the district from engaging in, or licensing anyone else to engage in such activity.

In contrast to this agreement, the San Mateo County Fair, in the reverse situation entered into a contract with the California Jockey Club for the lease of Bay Meadows Race Track for a running race meet concurrent with the San Mateo County Fair.

Among other things that agreement provided the county fair would pay to Bay Meadows all costs of maintaining the racing strip, and pay for the furnishing of track equipment such as tractors, water wagons, and trucks, and for all equipment such as parimutuel machines, forms, programs, starting gates, public address systems, program and all other supplies and services necessary to conduct the race meet, including a pro rata of the insurance, and for cleanup charges. Additionally the county fair agrees to borrow a cash revolving fund of \$300,000 from Bay Meadows at current interest rates.

"All expenditures in connection with the operation of said Race Meeting shall be approved by the said Association (County Fair) and said second party (Bay Meadows)."

Rental for Bay Meadows was established at 50 percent of the net on "all income derived from mutuel play, gate admissions, programs, parking and concessions."

Racetrack operators calculate each dollar bet on the first race will turn over in the pool $2\frac{1}{2}$ times during the day. A person who brings \$10 to the track to wager therefore in effect provides commissions to the track on a total of \$25. In the case of Del Mar, where the tenant is paying rental based solely on commission from the pool alone, with all other income rent free, the profits to the tenant can be increased by capturing the dollar before it is wagered. Parking, admission, reserved seats and programs will place profits directly in the tenant's pocket without any rent payment. Food and beverages will further reduce the amount to be wagered. If the tenant can capture 60 percent of the \$10 to be spent only \$4 remains for wagering. Conceding this to turn over $2\frac{1}{2}$ times the track will collect commission on only \$10 instead of \$25 and the rental paid will be substantially reduced. So, too, will the taxes paid to the State on the parimutuel pool be reduced.

It is obvious the tenant is fully aware of these elementary facts from the frequency of his price increases for parking, admissions, food, beverages and other revenue-producing activities.

The failure to provide in the lease a share of the other revenues to be paid the landlord created a most inequitable arrangement. The State simply has failed to obtain reasonable and fair payment for the facilities provided.

The original lease provided that the tenant would occupy the 22nd District premises for the purpose of conducting race meetings up to 100 days. It also recognized the right of the 22nd District to conduct racing concurrently with its fair.

Under the law a district agricultural association may be granted a maximum of 14 days racing annually by the Horse Racing Board. The law further provides that a county in the classification (for horse-racing purposes) of San Diego County may be granted a maximum of 39 racing days annually. If the 22nd District fair utilized its maximum of 14 days there remains only 25 days to be granted to Del Mar. This was the situation at the time of the lease entered into in 1936. Therefore, the Del Mar Turf Club at the time of the lease agreement could not anticipate more than 25 racing days. The records show that for the first four years of the lease racing conducted by the Del Mar Turf Club did not exceed 25 days.

Subsequently, inasmuch as the 22nd District, in effect, slept on its rights and did not apply for racing days, the turf club pre-empted the days and since 1947 has conducted racing for the maximum days available for racing in San Diego County without any additional payment to the 22nd District for the privilege, other than the 12½ percent.

The estimated value of the 14 days on a pro rata of total income under current operating methods is \$1,400,000 gross revenue or \$23,000 per day profit. Total profit is estimated at \$332,000 for the additional 14 days for which the district receives only an estimated \$140,000.

At the present time the 14 days still may be applied for by the 22nd District and the district by this action could reduce the number of days available to the tenant. Further, by conducting racing at its own track for the 14 days the district would receive the full profit on parimutuel wagering plus the profits on all other activities ordinarily conducted in connection with a race meet. This action could be taken without any breach of its lease agreement with the turf club.

The revenues to the 22nd District in its role as landlord of the race-track have varied over the years with the 1959 rental payments totaling \$391,851.48. It appears this was the first year during the entire period of leasing, however, in which the district received the full amount in cash due it under the 12½ percent lease agreement.

Even so, a comparison of this rental payment with the property taxes paid by other tracks discloses the Del Mar Turf Club is receiving the benefit of occupancy of a track for little more than property taxes paid by some privately owned tracks, without the other expenses such as maintenance, depreciation, replacements and improvements borne by the private tracks. For example, property taxes paid by Hollywood Park on land and improvements assessed at \$4,332,080 in 1958 were \$338,764.73 while Santa Anita paid \$331,057.12 on land and improvements assessed at \$4,381,210.

The comparisons are made with Santa Anita and Hollywood Park for the reason that the Del Mar Race Track, from the standpoint of

seating capacity and parimutuel handle during its race meet, is the third largest track in the State outranking all three Northern California tracks.

As has been stated, 1959 was the first year in which the district received in cash full payment of the 12½ percent rental. This is accounted for by the fact that before the ink was dry on the initial lease, the district entered into an agreement on January 22, 1937, wherein Del Mar Turf Club would advance money to the district for completion of the track construction which would be deducted from the rental payments.

Subsequent advances had by July 11, 1938, brought the total indebtedness to \$491,663.83. By 1950 the turf club was undertaking capital improvements on state property under its own direction under agreements wherein the costs would be deducted from rental payments. In that year the turf club gained without the payment of any money, a 10-year extension on the lease which was to expire in 1959. In this 1953 lease the turf club also received the right to undertake extension of the grandstand and other capital improvements for which the turf club would pay one-half, but not to exceed \$200,000 of all costs over \$600,000. The total cost of improvements was not to exceed \$1,000,000.

The money so expended by the turf club accomplishing capital improvements on state property without the immediate supervision of the State was to be deducted from rental payments. It was an accumulation of these advancements which placed the district in the position of never realizing the full amount of rental until 1959.

The extension of the grandstand under the 1953 agreement turned out to be for the purpose of installing a swank turf club seating 1,326 together with catering facilities to service the turf club. The Del Mar Turf Club charges membership fees for the privilege of belonging to the turf club. The catering facilities which were so provided was in direct conflict with a specific provision under which the district agreed to the grandstand extensions which stated none of the money was to be spent on catering facilities. As has been pointed out the district receives nothing from the food and beverage concession operations which in 1959 netted the tenant in excess of \$180,000 on the basis of a reported 25 percent of the catering concessionaire's gross.

In addition to the capital outlay expenditures accomplished through advances by the turf club, subject to deductions from rental payments, an examination of the books of the district discloses constant disbursements for capital improvements in connection with the track. These expenditures presumably are from the rental revenues received by the district after the deductions for capital improvements made under the executed agreements. Also some of the funds allocated to the district by the State for capital outlay have been used for construction in connection with the track operation. It is also possible that portions of the annual \$65,000 allocations received from the State were so used in earlier years.

Also funds of the district have been expended for maintenance and beautification of the track.

Among major capital expenditures of the district directly benefiting the track are :

1. Construction of barns and stalls (500 stalls have been added).
2. Paving of parking areas (in excess of \$500,000 expended for this despite 1953 lease provision this was to be done out of \$800,000 loan).
3. Installation of new inside rail on track. (\$40,000 cost.)

Among maintenance costs of the district for the track are:

1. Payment to tenant of \$35,000 annually.
2. Repairs and painting of structures.
3. Striping of parking areas.
4. Electrical and water lines.

Operational costs borne by the district include the payment of utilities. The annual utility costs of the 22nd District are approximately \$40,000. Under a verbal agreement the tenant has agreed to pay all utilities during the three-month period in which falls the tenant's occupancy, \$425 per month during the other nine months. In addition, the tenant pays \$1,000 per month for four months. During this latter period the track and its facilities are utilized by the Western Harness Association for winter training. No right for such use of district property is contained in the lease. The Harness Association occupies the barns, living quarters above the stables for stable hands, trainers, and others and uses the track and other facilities. The amount of payment to the turf club by the harness association is not known. The tenant's caterer operates a cateria for the harness association personnel without payment to the district. The district meanwhile is paying its annual \$35,000 for maintenance of the track despite the fact the harness association is actually using the track (and presumably increasing the maintenance costs for a four-month period).

Since the entire district plant is single metered for its utilities it is not possible to determine the actual power and water used by the tenant. The billing does not coincide with the dates of possession by the tenant. Because of this the district and the tenant have hit upon a novel way of determining the share for each to pay. The bills for the months in which the occupancy is split, July and September, are shared equally.

Under these arrangements the utility costs to the district have been reimbursed by the tenant by approximately \$22,000, leaving the net cost to the district at about \$18,000.

Bearing in mind that the only buildings of the district not related to the track are the four exhibit buildings, two warehouses and administration building, and practically no planting requiring water, the district utility costs should be nominal throughout the year excepting for the activities immediately preceding and during the fair.

A comparison with other districts as reported by the Division of Audits shows utility costs in all other districts to be below the 22nd despite the fact many have larger plants and more interim activity. Fresno, with greater attendance, in 1958 reported \$11,753 expended for light, heat, water and power. Monterey, with a larger fair plant and more interim use in a colder clime where heat usually is required for building use, expended only \$4,875.

Other costs to the district chargeable to its costs of renting the race track are represented in the excessive preparations and cleanup costs

coincident with the fair. In 1958 Division of Audits reported \$76,425 expended for temporary structures alone. Maintenance and general operations for the year totaled \$146,719. If the district did not possess a race track this cost would be substantially less. For example, the annual excessive costs for temporary structures would be eliminated since concession stands and electrical and water connection could be permanently installed. Under the present system these must all be set up temporarily and then removed to get out of the race track operator's way.

The labor costs to the district are made exceptionally high because of two factors. One is the necessity to remove all fair temporary structures in a relative short time resulting in much overtime and the second is the fact that the Del Mar Turf Club insists that the fair abide by the provisions for labor contained in union contracts negotiated by the turf club in order to avoid labor union trouble for the track.

In the absence of cost accounting the financial experience of the 22nd District as a race track landlord to date will remain forever a mystery. But from the examination made it is believed that, taking both federal, state and district funds spent directly and indirectly on items which under proper cost accounting would be chargeable to the operation of the rental property, *the district has during the entire course of its lease, commencing in 1936 to date, expended more than it has received.* The total result of the experience to date has been a net loss. The assertion that it has gained in capital assets must be examined in the light of the knowledge that the present lease presumably does not expire until December 31, 1969 by which time the turf club will have occupied the plant for 33 years and will be turning back to the State a plant which under commercial practices would be considered fully depreciated.

The examination failed to disclose any expenditures by either the district or the tenant for improvements which would directly benefit the district by increasing the note of its rental revenue.

Since the initial lease of 1936 the following enlargements have occurred which have increased the tenant's revenues without any additional payment to the district:

1. Increased number of racing days from 22 to 39.
2. Extension of the grandstand.
3. Addition of the turf club.
4. Installation of additional catering facilities.
5. Purchase of additional parking area.
6. Paving of all parking areas.
7. Conversion of exhibit building for parking for preferred patrons.
8. Conversion of the lease property for use as winter training grounds for Western Harness Association.

Among major expenditures by the district which resulted in additional benefits to the tenant without additional payment are:

1. Increased number of stalls from 900 to 1,400.
2. Installation of turf track.
3. Beautification of track.
4. Installation of new inside rail.
5. Construction of living quarters above stables for track hands.

6. Fencing of race track area.
7. Construction of auxiliary buildings.
8. Installation of new entrance to the grounds.
9. Extension of the grandstand.
10. Addition of the turf club.
11. Installation of turf club elevator.

Other transactions reflected on the books of the district included payroll reimbursements to the tenant for the employment of carpenter crews. It was stated the carpenters were employed by the tenant to work on district projects. The payrolls were substantial. In 1959 the amount of \$2,565.96 was paid in April, \$5,513.34 and \$1,250.45 in May, \$1,525.94, \$1,820.00 and \$1,474.03 in June and \$3,171.83 in July. It was not possible to determine whether the carpenters worked solely on district projects.

In the same vein it was not possible to determine whether or not employees of the 22nd District worked exclusively on district projects or to what extent functions performed should properly be charged to the district's cost of operating the rental property.

Also included in the expenditures were purchases from the tenant of paper supplies. It was not possible to determine what quantities were purchased and what prices were charged or whether or not the paper supplies were used solely for district fair operations as distinguished from rental property operations.

The records and absence of records disclose the entire relationship between landlord and tenants has been loosely handled with no cost accounting, irregular procedures including purchasing without Department of Finance approval, service agreements without Department of Finance approval, violations or circumventions of the law with reference to employment of personnel and construction work, and the borrowing of funds without specific legislation.

Apparently many of the arrangements between the district and the tenant have been without formality or in the nature of "gentlemen's agreements" between the tenant and the board or between the tenant and the district manager, evidently sometimes without board knowledge. Since the assignment of its rights to Boys, Inc., in 1954 there does not appear to have been any written agreements between the Del Mar Turf Club and the district or between the sub-lessee, Operating Company and the district.

An examination of the Operating Company financial statement for the year ending May 31, 1959, together with certain agreements between Del Mar Turf Club, the 22nd District, Operating Company and Boys, Inc., by a certified public accountant provided the following observations:

"From a superficial examination of the financial statements (supported by attached specific comments) it is my opinion that the operation of the Del Mar Race Track shows a handsome profit, subject to qualifications outlined below, when stated in the following form:

| | |
|--|---------------------|
| 'Net profit before income tax, as per Exhibit A..... | \$52,770.74 |
| 'Rental under sub-franchise,' as per Schedule 5..... | 474,936.61 |
| Factual earnings | <u>\$527,707.35</u> |

"On a gross income of \$3,869,136.58 for 1958-59, this is 13.6+ percent to gross before federal tax, an enviable record. Or, considering the paid-in and retained net worth of \$2,242,678.18 obtained by adding the consideration paid by Boys, Incorporated, to the Del Mar Turf Club (without reference to possible inflation of this consideration) and the June 1, 1958, net worth of Operating Company, this is a before tax earning ratio of 23.5+ percent on capital, again commendable.

"Rather than comment on income in the more detailed portion of this memo, since these are presumably audited figures, I have limited my outline to expense commentary. Two items do intrigue curiosity in the income sections: 1.) Just what does \$21,831.97 in 'non-race meet income—all others include.' (If part of it represents income from the agreement with Western Harness Racing Association, or other use of the premises outside of the specified preopening actual meeting, and post meeting periods spelled out in the lease, what is the Department of Finance's viewpoint as to whom this income belongs); and 2.) overhead and payroll taxes charged to others \$1,216.59—who?

"While the accompanying specific comments are obviously limited in scope, further comparisons are available to your staff through ratio comparisons with reports filed with the CHRB by other California tracks, and with comparable Del Mar Turf Club reports for prior years, bearing in mind the odd mixture of rather rigidly fixed, directly or semidirectly variable and discretionary costs at various levels of business characteristic of racing.

"On the qualifying side, however, my experience leads me to believe that the Del Mar Turf Club is not fully realizing its potential volume for a variety of reasons relating to management. As a partial listing of areas I would contend need improvement, let me suggest public relations (with the community, the average customer, the press corps, and the horsemen), promotional activities, advertising, plant facilities (mutuel lines, restrooms, paint and general cleanliness), and service pricing (food, drink and parking). While efforts to increase volume would usually, but not always, entail additional expense, it is my conviction that the immediate potential increase in revenue could bring substantially higher earnings.

"But the most striking feature, in my considered opinion, to be gleaned from these financial statements and a layman's review of the principal contract involved, is that Boys Incorporated of American and its Operating (or captive) Company are the beneficiaries of a 'sweetheart lease.' This is not on one, but on two counts. First, I don't believe that by a reasonable valuation of the investment involved and any reasonable capitalization rate employed the 22nd District Agricultural Association is receiving an adequate return on the value of the property. Second, the history of substantial improvements (and, I am sure, some inadvertently commingled repairs and maintenance), being made out of rentals and capital outlay funds seems entirely foreign to my concept of a lessor's function. This without reference to: (1) the tenant's ability to pay, which is certainly not being abused, but which is

one of the standard factors involved in leasing real property; (2) the failure of the lease to assess rent on some \$1,000,000 in revenue other than parimutuel commission and breakage; (3) the absence of a substantial minimum rental (as even Boys Incorporated requires of its captive company) which would protect the district against another 1943 and 1944 (or against the revocation of the license for cause) and would compensate the district for increasing its investment; (4) the option, but not the obligation, of the master tenant to renew after the 1969 date; and (5) the seemingly implied license for the tenant to use racing dates allocable to the landlord.

"Departing from the subject lease, let me suggest that your staff compare total occupancy costs of other race tracks whose statements are public. Between economic (not tax purpose) depreciation, imputed cost on invested capital, and replacement or rehabilitation costs a total cost obtained can reasonably be compared with the rental involved in the lease under discussion.

"As another approach, reduce the rental revenue of the district by economic depreciation (considering the relatively short-term lease and the specialized use of the property) on the value of the improvements by either a historical cost or appraisal approach and compare this lesser figure with the district's net depreciated valuation including land to reflect the actual return to the State.

"Let me suggest one other thought for the record: Is it not possible that at least a portion of the high value placed on past sales of Del Mar Turf Club stock, or on the 1954 transaction, reflects that additional earning power provided by a favorable lease."

XVII. DEL MAR CATERING COMPANY

The Del Mar Catering Company is principally the concessionnaire of the tenant but also operates as a fair concessionnaire during the district fair. It appears that over a period of years the company has effected something in the nature of a "squatter's right" on the district property. It occupies an administration building adjacent to the district administration building for which it pays the district \$125 per month. The company initially used the building in connection with the race meet but expanded its use into its headquarters for year around operations which includes catering in and about San Diego County. It is not known at what point the rental payments commenced or whether the company enjoyed the use of the building for a period without rental payments.

About six years ago the company constructed a warehouse on the district property at an estimated cost of \$15,000. No formal agreement between the company and the district exists for the use of the property for this purpose and no rental is paid. Prior to that time the company had erected a cafeteria building at an estimated cost of \$20,000 which it uses to service track hands during the race meet and track hands in connection with the Harness Association winter training. No rental is paid and no formal agreement for the use of the property for this purpose exists.

Additionally, the company uses a portion of the area underneath the grandstand for storage for which no agreement exists and no rent is paid. It also uses three-fourths of the art show building where it has installed a walkin refrigerator and other refrigeration units consuming an estimated \$200 per month power. No written agreement exists and no rent or reimbursement for utilities is paid.

As has been stated the district does not share directly or indirectly in the catering concessionnaire's gross during the race meet.

XVIII. OTHER INTERIM USES OF THE FAIRGROUNDS

The 22nd District does not achieve the interim use of its grounds accomplished by some other districts. Lacking in cost accounting it fails to benefit from the interim activities.

One example is the granting to a private auctioneer the use of the grounds for a two-day livestock sale. The auctioneer conducts the sale for profit, collecting a commission on all sales. But the district, instead of basing its rent on a percentage of the auctioneer's gross, charges a flat rental which fails to cover cleanup costs.

Another is the granting of the use of its buildings to a local school district in which to conduct adult education classes in arts and crafts. The district collects no rent, standing the cost of cleanup and utilities, despite the fact the school district collects ADA from the State for the classes and despite the fact the school district is permitted under the law to charge registration fees of the adult enrollees to cover all costs.

SUMMARY OF FINDINGS

Despite the highly irregular procedures and conduct of the 22nd District affairs, either from a standpoint of good business procedures or as required by statute and Department of Finance regulation, no evidence of criminal diversions, "kickbacks," bribes, solicitations or gifts traceable to the management was found, with the possible exception of the insurance commission received by the North Coast Investment Company in which the manager participated. This exception was so minor financially as to not deserve serious consideration insofar as it being a criminal act, however it could be construed to be misconduct in office and be the basis for possible dismissal action if the individual were still in the employ of the district.

More serious was the misconduct over a long period of time in the avoidance and violation of procedures and regulations established by the Department of Finance and of state law. These would properly be the basis for dismissal if the manager responsible was still employed.

But the entire responsibility cannot be placed upon the manager. The board must be held responsible for the acts of the manager. It is no excuse that the board was derelict in that it did not know what the manager was doing. The manager has no authority or power to act on his own. The only actions binding on the district are those which have been approved by the board, and in many cases subject to the approval of the Department of Finance.

If the board, through delegation of authority or dereliction of duty, permits the manager to purchase, contract and enter into agreements, the board remains responsible.

In the instance of the 22nd District the manager apparently was aggressive and dominant. It has been stated by several board members that he refused them access to the books of the district and on many occasions told them to mind their own business, and refused to answer questions as to the affairs of the district.

A letter issued by the manager to district employees instructed them to be courteous to the directors but to disregard anything the directors said. The letter read:

March 6, 1959

To All Key Employees and Superintendents—

Some of our new directors are a little overzealous to do a good job and do not intend to but have caused some confusion in our ranks as some requests have been misinterpreted as orders.

You are working for one boss only who must be responsible for final decisions. Please be courteous to all directors but do not take any suggestions seriously.

All orders for supplies must receive approval as in the past. No plans are to be altered unless they follow the usual "chain of command."

The board makes policy decisions—the manager endeavors to carry them out with your assistance.

Thank you,

(Signed) PAUL T. MANNEN
Secretary-Manager

PTM:mf

Neither can the entire responsibility be placed upon the board since the Department of Finance has the overall responsibility for supervising the fairs and has the authority to pass judgment upon the actions of the managers and the boards.

In the instance of the 22nd District it is evident the department was aware, through both its Division of Audits and its Division of Fairs and Expositions, as well as through its legal adviser, that irregular procedures were frequently occurring in the 22nd District for the files are replete with communications between these agencies questioning, cajoling and directing corrections be made.

On August 1, 1959, the 22nd District employed a new manager. The examination which included transactions up to October 1 disclosed no irregularities since August 1, 1959. He appears to be taking all corrective measures within his power.

However, until the relationship between the district and its race track tenant is thoroughly clarified, a smooth management resulting from an ability to resolve all of the problems of the district and to chart a future course does not seem possible.

At present, the provisions of Section 87 of the Agricultural Code have precluded the 22nd District from negotiation with others in order to obtain equitable rental for its race track.

RECOMMENDATIONS

1. The committee should appoint special counsel to review the lease agreements between the State and the Del Mar Turf Club to determine the legality of the agreements, and whether legislative intent has been circumvented.
2. Legislation should be enacted to permit the leasing of the 22nd District race track in order to allow it freedom to secure a fair and equitable return on the State's investment.
3. A sampling examination should be undertaken of some other district fairs to determine to what extent irregularities may have occurred and what legislation may be necessary.
4. If examinations of other fairs disclose the 22nd District was not an isolated case, attention should be given the Division of Fairs and Expositions, Division of Audits, Purchasing Division, and the Department of Finance to determine wherein the weaknesses exist which permit loose management of fairs, and what corrective legislation may be needed.
5. Administratively the Department of Finance should assist the 22nd District in accomplishing the following:
 - (1) Establishment of proper cost accounting.
 - (2) Drafting of a proper lease agreement for the rental of the track assure the State of a fair and equitable payment for its property.
 - (3) Drafting of a proper lease agreement for the rental of property to the Del Mar Catering Company.
 - (4) Developing a policy for the rental of its property to others, to assure proper use and proper payment.
 - (5) Clarification of the present lease arrangement between the district and the Del Mar Turf Club either through an action to declare invalid or through an action for declaratory relief.
 - (6) Establishment of the 22nd District race meet for the 14 days to which it is entitled to apply for a license unless adequate payment is made for the use of the track for those days by the tenant.

Exhibit A

22nd DISTRICT AGRICULTURAL ASSOCIATION ALLOTMENTS FOR CAPITAL OUTLAY**Section 19626, Business and Professions Code**

| <i>Date</i> | <i>Executive Order No.</i> | <i>Amount</i> | <i>Purpose</i> |
|--------------------|--------------------------------|---------------|---|
| Mar. 10, 1959----- | F-981 | \$50,000 | Horse barns |
| Dec. 18, 1958----- | F-937 | 10,000 | Plans for flower show building |
| Oct. 18, 1957----- | F-849 | 222,000 | Paving |
| Dec. 21, 1955----- | F-738 | 517,000 | Exhibit building |
| June 15, 1954----- | F-654 | 33,000 | Exhibit building plans |
| Feb. 4, 1953----- | F-594 | 64,692 | Entrance road; restroom in exhibit building |
| Nov. 13, 1952----- | F-589 | 31,275 | Miscellaneous improvements |
| Jan. 3, 1952----- | F-532 | 88,200 | Sewage disposal system |
| Mar. 22, 1951----- | F-492 | 85,000 | Sewage disposal system |
| Nov. 22, 1950----- | F-473 | 58,000 | Exhibit building (partial) |
| Apr. 10, 1950----- | F-443 | 55,000 | Electrical system |
| June 28, 1949----- | F-401 | 93,850 | Exhibit building (partial) |
| Mar. 28, 1949----- | F-385 | 150,000 | Exhibit building (partial) |
| June 18, 1940----- | F- 72 | 20,000 | No record |
| July 27, 1938----- | F- 26 | 15,000 | No record |
| Feb. 18, 1938----- | F- 7 | 5,000 | No record |
| Jan. 14, 1938----- | F- 3 | 25,000 | No record |
| Total ----- | | \$1,468,017 | |

22nd DISTRICT AGRICULTURAL ASSOCIATION ALLOTMENTS FOR ENCOURAGEMENT**Section 92, Agricultural Code**

| | | | |
|--------------------|-------------|--------------------|----------------|
| January 1936 ----- | \$62,937.31 | January 1948 ----- | \$65,000.00 |
| January 1937 ----- | 40,000.00 | January 1949 ----- | 65,000.00 |
| January 1938 ----- | 32,189.32 | January 1950 ----- | 65,000.00 |
| January 1939 ----- | 15,986.52 | January 1951 ----- | 65,000.00 |
| January 1940 ----- | 16,883.20 | January 1952 ----- | 65,000.00 |
| January 1941 ----- | 16,281.56 | January 1953 ----- | 65,000.00 |
| January 1942 ----- | 24,511.88 | January 1954 ----- | 65,000.00 |
| January 1943 ----- | 8,952.27 | January 1955 ----- | 65,000.00 |
| January 1944 ----- | 4,334.27 | January 1956 ----- | 65,000.00 |
| January 1945 ----- | 11,080.03 | January 1957 ----- | 65,000.00 |
| January 1946 ----- | 37,079.50 | January 1958 ----- | 65,000.00 |
| January 1947 ----- | 65,000.00 | January 1959 ----- | 65,000.00 |
| Total ----- | | Total ----- | \$1,115,235.86 |

Exhibit B

DEL MAR RACE TRACK

LIST OF RACING DAYS FROM THE INCEPTION OF RACING

| <i>Year</i> | <i>Racing dates</i> | <i>Total</i> | <i>Regular</i> | <i>Charity</i> |
|-------------|-----------------------------|--------------|----------------|----------------|
| 1937 | July 3-July 31 ----- | 22 | 22 | 0 |
| 1938 | July 29-September 5 ----- | 25 | 25 | 0 |
| 1939 | August 2-September 4 ----- | 24 | 23 | 1 |
| 1940 | August 7-September 2 ----- | 23 | 23 | 0 |
| 1941 | August 1-September 6 ----- | 32 | 32 | 0 |
| 1942 | No racing ----- | -- | -- | -- |
| 1943 | No racing ----- | -- | -- | -- |
| 1944 | No racing ----- | -- | -- | -- |
| 1945 | July 11-September 3 ----- | 40 | 35 | 5 |
| 1946 | August 6-September 14 ----- | 35 | 32 | 3 |
| 1947 | August 5-September 20 ----- | 41 | 36 | 5 |
| 1948 | July 27-September 11 ----- | 41 | 38 | 3 |
| 1949 | July 26-September 10 ----- | 41 | 38 | 3 |
| 1950 | July 7-September 9 ----- | 41 | 36 | 5 |
| 1951 | July 24-September 8 ----- | 40 | 37 | 3 |
| 1952 | July 22-September 6 ----- | 41 | 38 | 3 |
| 1953 | July 25-September 10 ----- | 41 | 38 | 3 |
| 1954 | July 27-September 11 ----- | 41 | 38 | 3 |
| 1955 | July 27-September 10 ----- | 40 | 37 | 3 |
| 1956 | July 26-September 10 ----- | 40 | 37 | 3 |
| 1957 | July 24-September 9 ----- | 41 | 38 | 3 |
| 1958 | July 23-September 9 ----- | 42 | 39 | 3 |
| 1959 | July 24-September 12 ----- | 42 | 39 | 3 |

MEMORANDUM

From: EARL G. WATERS, Executive Officer

To: SENATOR STANLEY ARNOLD, Chairman

Subject: Lease agreement between 22nd Agricultural District
and Del Mar Turf Club

The Franchise Agreement between the 22nd District and the Turf Club, executed December 8, 1936, its amendments, supplements and extensions have been examined and your attention is directed to the following enumerated questions:

1. Was the original agreement reasonable and equitable to the State?

On December 8, 1936, the 22nd District Agricultural Association entered into a franchise agreement wherein it would grant to the Del Mar Turf Club the use of its facilities "for the purpose of conducting, holding, operating and maintaining a race meeting or meetings, and all activities commonly or generally connected therewith * * * for such periods of time each year (not exceeding in the aggregate sixty (60) days in any one year), and under such rules and regulations as the California Horse Racing Board may provide from time to time, and for an additional period of thirty (30) days prior to, and subsequent to, each of such periods designated by said California Horse Racing Board, said franchise to extend over a period of ten (10) years, beginning the first day of January, 1937, and ending the thirty-first day of December, 1946."

In consideration the Turf Club was to pay the sum of \$100,000 to the district and 12½ percent of the Turf Club's share of the pari-mutuel wagering (the Turf Club share being that percentage of the handle as provided by law as the track's commission plus its share of the breakage).

The unreasonableness and unfairness of this agreement lies in the fact there was no provision for the State to share in any of the other revenues resulting from "all activities commonly and generally connected" with a race meeting, including parking, admissions, seat reservations, turf club, food and liquor concessions, program sales, and so forth.

The agreement specifically withheld from the district any rights to such activities to-wit: "* * * it being the intention by the provisions of this franchise that during the period of any race meeting neither party of the first part nor anyone licensed by it shall have the right to conduct any business within said fair grounds at which commodities of any sort are vended, sold or disposed of or at which any admission whatsoever is charged."

Since the district was not to be permitted to engage in these activities it should have been compensated for the use of its facilities by others for these purposes.

2. Was not the agreement violated by the Turf Club if it wrongfully used Fair District property not provided for its use under the franchise?

While the Turf Club was granted the "exclusive use of the fairgrounds, race tracks, grandstand, stables, concession spaces and buildings, save and excepting the exhibit buildings and administrative offices of the party of the first part, * * *", the district agreed only to furnish the following: A grandstand, club house, receiving barn, 900 stalls each 12 X 12, with ample walking area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, office for officials at the track, offices for the California Horse Racing Board and executives of the Del Mar Turf Club.

But the Turf Club has used for the purposes of revenue increasing areas and buildings, including land acquired by the district after the lease was executed, for parking; stalls in excess of 900 (now numbering about 1400); housing above the barns for living quarters of track roustabouts; an exhibit hall (Crosby Hall) for the parking of preferred patrons and official vehicles; a building for use as a cafeteria for the accommodations of track roustabouts living at the track before and after the actual race meeting. Additionally, the barns, track and other facilities have been leased by the Turf Club to the Western Harness Association for its winter training period of approximately four months not within the 60 days or the 30 days prior to and subsequent to the 60 days as per the terms of the lease. During this period the living quarters at the barns are used by the Western Harness Association, and the track food concessionnaire operates a cafeteria for the track roustabouts.

Additionally, the Turf Club's food concessionnaire, the Del Mar Catering Co., built a building upon the fairgrounds for use as a warehouse and uses a portion of the area under the grandstand for storage for which the district receives no compensation.

3. What rights, privileges, and revenues has the Turf Club pre-empted from the district without payment by reason of its applying annually and being granted the 14 racing days to which the district is entitled?

As cited the franchise agreement grants the use to the Turf Club of its track for racing meetings not to exceed 60 days.

Under Section 19537 of the Business and Professions Code it is provided that the California Horse Racing Board may allow a maximum of 39 racing days per year (plus charity days) in San Diego County and that the district fair may be granted up to 14 of those days.

So the franchise agreement notwithstanding, the Turf Club, in entering into the lease, could not expect to have any right beyond 25 days of racing.

Furthermore, the agreement specifically provided "it being understood that the execution of this franchise agreement shall in no wise prevent the party of the first part from using its fair grounds for the purpose of holding annually thereon a fair (including harness and running races with pari-mutual betting) during July or August * * *."

During the first four years of the lease the Turf Club meet was 25 or less days but in the fifth year it held a 32-day meet and save for

the three-year period when no racing was held the succeeding meets have all been 35 days or more. (Exhibit A.)

It is to be assumed that had the district exercised their rights to hold their own 14-day racing meet, the revenues accruing would have been substantially more than those realized from the Turf Club's pre-emption of the district's racing days for the district would have received the full track commission on the pari-mutuel handle rather than 12½ percent plus its rightful percentages on all other track activities such as food and liquor concessions, parking, etc.

4. What authority does a state agency have for borrowing money from a private lender? Did not the inclusion of a provision contemplating this action invalidate the lease?

As recited in the franchise agreement the lease was predicated on buildings and facilities to be constructed by the district with a \$500,666 WPA grant.

After the franchise was executed it developed the funds were not sufficient to complete the track and necessary facilities. Under supplemental agreements executed January 22, March 1, April 5, and October 11, 1937, and July 11, 1938, the district entered into a series of loans which under July 11, 1938, agreement totaled \$491,663.83 for the purpose of completing the track and its facilities. Said funds were to be repaid by the district out of moneys payable to the district by reason of the rental agreement or from moneys appropriated by the Legislature.

The authority of a state agency to borrow from a private lender, whether or not it be based upon the possibility a future Legislature may appropriate to it funds, does not exist. The fact that the franchise and the subsequent loan agreements were approved by the Department of Finance does not extend such authority because the department cannot by approval make legal that which is illegal in the first instance.

5. Is not the Memorandum Agreement of February 5, 1945, invalid for the following reasons:

- (A) *It was based upon an agreement of December 8, 1936, which had become null and void.*
- (B) *It included an exercise of a 10-year option which was not exercisable until the original franchise had expired.*
- (C) *By reason of the parenthetical provision on page 3 of the franchise agreement referring to legislation.*

(A) *The agreement of February 5, 1945, provided for an extension of the 10-year period granted December 8, 1936, to December 31, 1949, based on the fact that under the original agreement the turf club had held meetings for only five years and the extension would cover an additional five annual meetings. The failure to hold annual meetings for three years was said to be due to the inability of the Del Mar Turf Club to be licensed by the Horse Racing Board which withheld the license for those years of their own volition for the stated reason of existing hostilities then existing between the United States and foreign powers.*

But the December 8, 1936, franchise specifically provided: "... that this franchise agreement shall terminate and become null and void and

of no further force or effect if for any reason Del Mar Turf Club is unable to obtain from the California Horse Racing Board a license to conduct race meetings at said racing plant hereinabove referred to."

In a letter to the Director of Finance May 26, 1943, W. R. Augustine, Deputy Attorney General, sets forth the view that while there is no war exception in the contract and in 13 CJ 640 it is stated "An impossibility of performance due to a foreign war is no excuse," nevertheless since the State (Horse Racing Board) denied the license it could hardly "in equity and justice contend or maintain the turf club failed to carry out the provisions of the franchise agreement . . ."

The letter in support of its contention of unfairness to the turf club goes on to recite that the turf club had advanced nearly a half million dollars to the district and termination would be "grossly inequitable."

But the facts were that the district had invested more than a half million dollars (WPA grant) plus presumably the \$100,000 paid for the franchise, plus certain moneys derived from the State and had obligated itself for another half million (half of which had already been returned to the turf club) on the expectation of receiving regular annual returns and had taken the precaution of inserting a termination clause in the event those earnings were interrupted.

The mere fact of the lease or franchise being terminated by reason of the turf club's failure to be licensed for three years would not of itself inflict any inequity upon the turf club since it is not evident the turf club had invested anything in proportion to the district's investment. In fact, there is no evidence of the turf club investing anything in the way of capital improvements; its investments being in the nature of loans for capital improvements to the district.

(B) In Section 5 on page 4 of the February 1945 agreement the turf club is granted an additional 10 years after the expiration of the extension granted in Section 2. Consideration is the expenditure of \$50,000 for unspecified improvements over a 15-year period specified in Section 4 and the payment of \$100,000 over a period of three years commencing with the new second 10-year period.

But the original franchise agreement provided the turf club would have an option to renew only "In the event the party of the second part has, upon completion of the 10-year term, carried out all of the terms and provisions of this franchise, . . ."

It further provided that in the event the district "at the end of the first 10-year term" received a better offer from some other party for the lease of the track the turf club was to have a 30-day period in which to equal the offer in order to exercise its option.

It is obvious the original franchise contemplated a 10-year trial period to determine if Del Mar was capable of living up to "all of the terms and provisions" and to enable the district to gain experience whereby it could negotiate for a better lease if conditions after 10 years' operation indicated better terms were warranted.

It is further obvious that by negotiating a new lease before the 10-year period had expired and in effect permitting the exercise of an option which was not effective until the 10-year period expired, the agreement foreclosed the rights of the district to gain the 10-year experience.

It would further appear the district board had, up until shortly before the execution of this so-called extension, contemplated only granting an extension to cover the lost war years for the minutes of a meeting of the board of December 29, 1944, show an action rescinding the board's action of November 27, 1944, wherein it had established as part of the consideration for extending the lease for only the five-year period, the expenditure of \$100,000 by the Turf Club for track improvements to be accomplished within the five-year period.

(C) *On page 3 of the franchise agreement wherein the option provision is contained it is parenthetically and specifically provided that "(This option to be available only in the event the California Legislature shall not prior to the expiration of said 10-year term have by appropriate legislation deprived the 22nd District Agricultural Association of the power to enter a franchise agreement of the nature contemplated by said option.)"*

The franchise was entered into on December 8, 1936, and did not expire under its terms of that date until December 31, 1946.

The 1938 Legislature did in fact not only deprive the 22nd District but all other agricultural associations of the power to enter into such contracts by enactment of Section 87 of the Agricultural Code.

While that section did provide the new law should not apply to existing leases, or extensions or renewals thereof, the language of the franchise agreement is so worded as to place a serious question as to whether by its (the franchise agreement's) own terms a renewal or extension is not in fact precluded since it states "... deprived the 22nd District Agricultural Association of the power to enter a franchise agreement of the nature contemplated by said option."

In other words the franchise agreement does not state "deprived the 22nd District of the power to enter into a *renewal or extension of this franchise agreement* . . ." but rather "deprived the 22nd District of the power to enter a *franchise agreement*" and the additional wording is merely descriptive of the kind of agreement.

The legislation certainly did deprive the district of the power to enter a *franchise agreement*. Further the option was not for an extension or renewal but an option for a new agreement since it was provided the option existed at "the completion of said 10-year term." Said 10-year term could not be completed until December 31, 1936, at which time the original franchise would expire.

6. Was not the agreement of August 20, 1949, wherein the district, without approval of Finance, agreed to reimburse, out of its rental, the Turf Club for an expenditure of \$56,552 for the installation of a fire sprinkler system in the grandstand illegal? Did it not breach the agreement of February 5, 1945?

As before contended a state agency has not the authority to borrow, nor has it the authority to obligate itself beyond that specifically authorized by the Legislature.

Further, a state agency may not contract without the approval of Finance and may not enter into a construction contract in excess of \$10,000 without advertising for bids.

It is not evident that Finance approval was obtained prior to the improvements being made as provided on page 3, Section 4, of the February 5, 1945, agreement.

7. Were not the agreements of February 1, 1950, and April 1, 1953, illegal despite approval by Finance?

As previously contended the approval of Finance does not make legal that which cannot be legally accomplished. The February 1950 agreement between the district and the Turf Club provided the Turf Club would enter into contracts for the construction of barns and stables for a total of \$95,000 and the district would repay out of its rentals.

The state law provides that construction of buildings on state property must be approved by the Division of Architecture, and bids must be advertised for. Further, again the district obligated itself for something which was not approved by the Legislature, and borrowed money from a private party.

If the barns were to be constructed they should have been so constructed under the regular procedures and under the immediate direction and supervision of the State.

Under the April 1, 1953, agreement the district again, with Finance approval, agreed to repay the Turf Club for reinforcing and extending the grandstand roof for the sum of \$65,000 to be repaid out of the rental payments.

In both instances, as in other improvements made by the district prior and subsequent to the April 1, 1953, agreement the district, through borrowing or expenditure of its own funds or of State allocated funds, contributed to track improvements for the use of the Turf Club without any provisions for increased payments by the Turf Club for the additional facilities provided.

8. What legal standing does the franchise agreement extension dated August 17, 1953, have in view of Questions 1, 2, 4, 5 and 6? What legal standing does the document have in view of the fact it provided again for the district borrowing money from the Turf Club? How can a contract exist where there is no consideration?

For reasons not apparent an agreement was executed August 17, 1953, termed franchise agreement extension wherein the franchise agreement was extended to December 31, 1969, despite the fact at the time of execution the 1936 agreement with the 1945 extensions had six years to run before expiration, and despite the fact no provision was made in the 1945 agreement for an option being granted to the Turf Club at the expiration of the provision wherein the Turf Club was granted a franchise to December 31, 1959.

There was no consideration given the district for the so-called extension which should have been worth more than the \$100,000 paid in 1936 for the original franchise and likewise more than the \$100,000 agreed to be paid for the 1945 so-called extension.

It is true that the Turf Club under the terms of this new agreement provided it should pay an increased percentage to the district but this

was for the two years (19½ percent in 1953 and 15½ percent in 1954) to which the Turf Club was already entitled under the terms of the 1945 agreement. After the two years the Turf Club returned to the original percentage of 12½ percent.

It is hard to agree that this temporary slight increase in percentage can be construed as consideration for another 10-year period, particularly when in the case of the original 10-year franchise and the second 10-year franchise the sum of \$100,000 was paid in each instance.

And where was the consideration for the additional facilities to be furnished the track for which the district obligated itself to expend \$800,000? (The principal portion of this was spent to install a Turf Club in the grandstand for which the district received no benefit from any revenues accruing as a result.)

Again the document provided for a loan to the district which it is contended could not legally be made.

9. If under Section 9 of the Agreement of 1953 the Turf Club expended more than \$1,000,000 was not the agreement breached?

It is believed that under the provision of Section 9 the Turf Club did in fact exceed the \$1 Million expenditure and did in fact deduct more than \$800,000 from the district rentals in claiming repayment.

It can easily be shown that the district expended more than \$500,000 of its own funds subsequent to the 1953 agreement for grading and paving parking lot areas which was agreed to be accomplished under Section 9 of the 1953 agreement.

10. Inasmuch as Provision 9 specifically stated “* * * shall not call for any expansion of catering facilities or equipment thereof * * * ” was not the contract breached if this was then done?

The installation of a bar operated by the catering concessionaire in connection with the grandstand extension and more particularly in connection with the Turf Club which was constructed as part of the grandstand extension was an expansion of the catering facilities.

11. If the Turf Club failed to live up to the maintenance agreement contained in the agreement would that not provide a clear breach of contract?

It is believed the Turf Club did in fact neglect its obligations with respect to reasonable painting maintenance as provided in Section 2 of the agreement.

12. If the Turf Club failed to pay all costs of operating the premises including utility costs, is not the breach sufficient to invalidate the contract?

An examination of the books of the district clearly shows deficiencies insofar as the Turf Club payments for utility costs.

13. If the Turf Club failed to pay at the end of each day its rental, does not that make the contract null and void?

Both the 1936 and the 1953 agreements provided that “ . . . said rental to be paid to district at the end of each racing day . . . ”

but throughout the entire period of occupancy payments have not been made until the conclusion and subsequent to that time of the racing meet.

14. Who is the present franchise holder if one exists?

The original franchise was granted to the Del Mar Turf Club, a California corporation. The amendments and extensions, particularly those of 1945 and 1953, were with this corporation.

On July 26, 1954, the Del Mar Turf Club sublet its franchise to Operating Company, a California corporation, the latter to pay to Del Mar Turf Club 90 percent of its net as rental.

On the same date Del Mar Turf Club executed an assignment of all its interest as the franchise holder to Boys Incorporated of America, a Delaware corporation.

Subsequent to these last two transactions Del Mar Turf Club filed in August 1954, notice of an election in which the Del Mar Turf Club voted to dissolve. The dissolution has not been completed and the corporation is presently in good standing, subject to the foregoing.

Inasmuch as the franchise holder was Del Mar Turf Club, now in the process of dissolving, who is the franchise holder? The sublease agreement was between Del Mar Turf Club and Operating Company. The State did not and could not under Section 87 of the Agricultural Code enter into a franchise agreement with Operating Company or anyone else.

Nor did the assignment of its interests by Del Mar Turf Club to Boys, Incorporated establish any franchise between the State and Boys, Incorporated.

15. Is not the district in a strong position to gain declaratory relief through court action?

Throughout the entire history of the franchise agreement the district has expended at least the major part of its revenues from rentals on improvements and additions to the facilities furnished the Turf Club, most of which resulted in increased revenues to the Turf Club from which the district did not benefit under the terms of the franchise. From the start up to and including the 1959 race meeting, the district has been under continuous obligation to the Turf Club as a result of moneys advanced or expended by the Turf Club for capital improvements and for which deductions have been made from the rental payments. Additionally the district has expended both its own money (principally derived from rental payments), and the moneys allocated it by the State for fair purposes, for improvements of principal benefit to the track operators.

In view of these facts, assuming the franchise remains valid, it would seem a judicial action would result in an order to renegotiate an agreement more favorable to the State.

Exhibit A

DEL MAR RACE TRACK

List of Racing Days From the Inception of Racing

| <i>Year</i> | <i>Racing dates</i> | <i>Total</i> | <i>Regular</i> | <i>Charity</i> |
|-------------|-----------------------------|--------------|----------------|----------------|
| 1937 | July 3-July 31 ----- | 22 | 22 | 0 |
| 1938 | July 29-September 5 ----- | 25 | 25 | 0 |
| 1939 | August 2-September 4 ----- | 24 | 23 | 1 |
| 1940 | August 7-September 2 ----- | 23 | 23 | 0 |
| 1941 | August 1-September 6 ----- | 32 | 32 | 0 |
| 1942 | No racing ----- | -- | -- | -- |
| 1943 | No racing ----- | -- | -- | -- |
| 1944 | No racing ----- | -- | -- | -- |
| 1945 | July 11-September 3 ----- | 40 | 35 | 5 |
| 1946 | August 6-September 14 ----- | 35 | 32 | 3 |
| 1947 | August 5-September 20 ----- | 41 | 36 | 5 |
| 1948 | July 27-September 11 ----- | 41 | 38 | 3 |
| 1949 | July 26-September 10 ----- | 41 | 38 | 3 |
| 1950 | July 25-September 9 ----- | 41 | 36 | 5 |
| 1951 | July 24-September 8 ----- | 40 | 37 | 3 |
| 1952 | July 22-September 6 ----- | 41 | 38 | 3 |
| 1953 | July 25-September 10 ----- | 41 | 38 | 3 |
| 1954 | July 27-September 11 ----- | 41 | 38 | 3 |
| 1955 | July 27-September 10 ----- | 40 | 37 | 3 |
| 1956 | July 26-September 10 ----- | 40 | 37 | 3 |
| 1957 | July 24-September 9 ----- | 41 | 38 | 3 |
| 1958 | July 23-September 9 ----- | 42 | 39 | 3 |
| 1959 | July 24-September 12 ----- | 42 | 39 | 3 |

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SUPPLEMENT TO THE EXAMINATION OF THE 22d DISTRICT

A REPORT OF THE SENATE FACT FINDING COMMITTEE ON GOVERNMENTAL ADMINISTRATION

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SENATE
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1960

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President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
Secretary of the Senate

SACRAMENTO, CALIFORNIA, March 10, 1960

THE HONORABLE STANLEY ARNOLD, *Chairman,*
and members of the Senate Fact-Finding
Committee on Governmental Administration
STATE CAPITOL, SACRAMENTO 14, CALIFORNIA

Re: Analysis of "Franchise Agreement" of December 8, 1936, between 22nd District Agricultural Association and Del Mar Turf Club, together with various "Memorandum of Agreements" supplementary thereto, etc.

GENTLEMEN :

The Staff Report on Management Examination of the 22nd Agricultural District transmitted to the Senate Fact Finding Committee on Governmental Administration November 30, 1959, questions not only the wisdom but also the validity of transactions had between the 22nd District and Del Mar Turf Club. By these transactions, the Turf Club has had a major control for the past twenty-three years of the 22nd District's fair grounds. There follows a legal analysis of these transactions starting with the "Franchise Agreement" of December 8, 1936, through the "Sub-Franchise Agreement" with Operating Company and the Assignment to Boys Incorporated of America in July of 1954, under which last instruments the fair grounds are presently controlled by others. These documents are attached and are referred to by Exhibit numbers in the respective divisions of this legal opinion which reviews them.

You have requested my legal opinion, which is herewith submitted on the questions stated below:

1. Was the Franchise Agreement (sometimes herein called "Lease") of December 8, 1936 (annexed as Exhibit 1) valid and within the power of the 22nd District to make? In my opinion, the answers are NO.

Section 86 of the Agricultural Code as the same stood in December, 1936, when the Franchise Agreement (Exhibit 1) was made for "a term of ten (10) years, beginning January 1, 1937 and ending the thirty-first day of December, 1946" read in part as follows:

"Each district agricultural association is a state institution. Each association by its name has perpetual succession, may have a seal, be sued and, with the approval of the Department of Finance, may:

* * * * *

"(c) Lease any portion of its real estate for the purpose of building museums or coliseums thereon.

"(d) Lease lands owned, managed or controlled by it, whether in trust or otherwise, not needed for the permanent use of said association, to any nonprofit agricultural fair association operating a county fair within its district, or to any municipal corporation or county, in which said lands are located, for a period not to

exceed fifty years, for purposes not inconsistent with the objects and purposes for which said association is formed and for which said lands are held, owned, or controlled by it."

Statutes, 1935, Ch. 699, p. 1897.

and Section 87 of the Agricultural Code at the time read in part as follows:

"The board of directors may, with the approval of the Department of Finance:

* * * * *

"(d) Arrange for and conduct, at such times and places as they deem advisable, a fair, exposition or exhibition of all the industries and industrial products in the district or State including horse races and speed contests and training horses therefor."

Statutes, 1933, Ch. 25, p. 72.

The statute enacted in 1933 creating the California Horse Race Board was amended in 1935 by Chapter 515, Statutes 1935, pages 1586-1588, to read in part as follows:

"Sec. 16. * * * and no tax, license or fee shall be assessed or collected from any district agricultural association or any county fair conducting horse race meetings, except when such meetings are conducted for such district agricultural association or county fair by a private person, firm or corporation."

It is apparent from the foregoing that the 22nd District Agricultural Association had no express authority to lease its premises to the Del Mar Turf Club. Its only authority along this line was to arrange with such a corporation for conduct of horse racing when included with "a fair, exposition or exhibition."

It is also apparent from the Franchise Agreement (Exhibit 1) that the parties were not intending to bring the Turf Club upon the premises to conduct racing during fair time. Under paragraph 1 of the Franchise Agreement (Exhibit 1), it states in part as follows:

"* * * It is the intention of this agreement that dates upon which are to be held the annual fair and races sponsored by the party of the first part (22nd District) shall not conflict with dates allotted party of the second part (Turf Club) by the California Horse Racing Board for any of its race meetings."

But Governmental agencies, such as the 22nd District, are commonly said to possess by implication powers which are additional to those expressly conferred by statute. They are said to have such further or additional powers as are necessary to the carrying out of those responsibilities imposed by terms of the statutes they are to administer. While nothing in the foregoing quoted legislative directions to the 22nd District could, even by implication, imply the authority to lease the fair ground site for horse race meetings held other than at fair times to a private corporation, it is advisable to consider the statutory declaration of purpose which underlies these districts. Section 81 of the Agricultural Code provides that such a District may be formed for the following declared purposes:

"* * *, for the purpose of holding fairs, expositions and exhibitions of all industries and agricultural enterprises, resources, and products of every kind or nature of the State with the view of improving, exploiting, encouraging and stimulating the same."

The broadest statement of implied authority for a Governmental agency in California is found in *Dicky vs. Raisin Proration Zone No. 1*, (1944) 24 Cal. (2d) 796, 151 Pac. (2d) 505, where the Supreme Court said that they have:

"* * * such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may be fairly implied from the statute granting powers. * * *"
24 Cal. (2d) 796, 810.

It has already been noted that not only is there no express authority to lease to a private corporation outside of fair time, but there is no occasion for implying it. This becomes doubly plain when the purpose for which the 22nd District and the other fair districts are established is taken into account, since giving dominion of the fair grounds to the Turf Club certainly could not and did not foster the holding of fairs, etc., or improve, etc., the resources and products of the State.

As an extended period of borrowing by the 22nd District from the Turf Club for construction and improvement and maintenance of race track facilities followed the Franchise agreement of December 8, 1936 (Exhibit 1), for the sake of completeness it might be advisable to consider this as a possible source of authority by implication to the 22nd District to enter into the Franchise Agreement (Exhibit 1). The "Memorandums of Agreements" under which this was done are annexed as Exhibits 2(a), (b), (c) and (d). However, it is recited in the Franchise Agreement (Exhibit 1) that race track facilities are under construction at the fair site as a WPA project, and the 22nd District reports that it will complete construction within not less than 150 days. There is no obligation undertaken by Turf Club to make advances towards completion of this construction. It did reserve the "right to keep said buildings" in event the WPA Project did not. The first indication of any lack of resources for completion of construction under the WPA Project came with the Memorandum of Agreement of January 22, 1937 (Exhibit 2(a)), when \$20,000.00 was loaned to the 22nd District as the sum necessary to meet its contribution to the financing of the WPA Project. There followed a series of further loans based upon "estimates prepared by architects" etc., all of which indicate some further enlargement of the race track facilities under construction. These after the fact necessities, if they were such, could not, of course, supply implied authority retroactively to December 8, 1936.

An examination of the Franchise Agreement (Exhibit 1) shows that it is in fact a lease, and rather than arranging for the conduct of races in conjunction with a fair, provides for racing at altogether separate times. For examples, paragraph 2 provides that the Turf Club is to "have the exclusive use and control of the fair grounds, race tracks, grandstand, stables, concession spaces and buildings, save and excepting the exhibit buildings and administrative offices of" the 22nd Dis-

trict. Paragraph 3 gives the Turf Club the right to itself complete construction, plan buildings and reimburse itself out of payments to be made to the 22nd District. Paragraph 8 characterizes part of these payments as rent:

“* * * the said party of the second part (Turf Club) further agrees to pay as additional consideration for the granting of this franchise a sum, to be known as rental of said premises, equal to twelve and one half per cent (12½%) of the total moneys received * * *”

by the Turf Club as its share of wagers. Paragraph 6 obliges the 22nd District to deliver up “possession” of the premises in good condition and repair, and the Turf Club to return them so “reasonable wear, tear and damage by the elements and acts of God excepted.” by paragraph 12, the 22nd District is obliged to keep the buildings insured and to replace them in event of a loss by fire.

In *Kaiser Co. vs. Ried* (1947) 30 Cal. (2d) 610, 184 Pac. (2d) 879, the plaintiff claimed it had no possessory interest in some ship yards belonging to the United States, but was merely using the same under a permit or license. Construing the arrangement to be one of lease, the Supreme Court said:

“Such provisions for cancellation and termination, however, did not establish plaintiff’s right to use the shipyards as no more than a permit or license which could not be responsible for a ‘property’ tax. As stated in *Von Goerlitz vs. Turner*, 65 Cal. App. 2d 425, at page 429 (150 P. 2d 278): ‘The test * * * “whether an agreement for the use of real estate is a license or a lease is whether the contract gives *exclusive possession of the premises against all the world, including the owner*, in which case it is a lease, or whether it merely confers a privilege to occupy under the owner, in which case it is a license, and this is a question of law arising out of the construction of the instrument.”’ (Emphasis added.) Here, as above noted, plaintiff’s “use and possession” of the shipyards under the contracts was “exclusive” even as against the United States in the light of the provisions for the Maritime Commission’s “right of re-entry” upon the default contingencies. So significant is the language in *Hammond Lumber Co. vs. County of Los Angeles*, *supra*, 104 Cal. App. 235, at page 240: ‘While the instrument executed between the plaintiff and the city of Los Angeles is denominated a “permit,” it is not, as plaintiff asserts, a mere license. It *grants to plaintiff for a fixed period the right to the exclusive use of the premises on prescribed terms*. It embodies an agreement having all of the characteristics and qualities of a lease, and entitles plaintiff to the exclusive control and enjoyment of the premises for the full term specified, subject only to the fulfillment of the terms and conditions expressed. On the termination of the tenancy improvements constructed by the occupant are to become the property of the city, but so long as plaintiff complies with its covenants, plaintiff remains secure in its possession through the agreed term.’ (Emphasis added.)”

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“It is true that plaintiff did not have the right to transfer its possession of the shipyards to another, but such prohibition did not remove plaintiff from the status of a lessee, for it is common practice for leases to include clauses forbidding assignment or subletting.”

30 Cal. (2d) 610, 619-620.

It is therefore evident that the Franchise Agreement (Exhibit 1) was outside the power of the 22nd District to make. This left the Agreement void and without force and effect.

2. Assuming that the Franchise Agreement of December 8, 1936 (Exhibit 1) was void, as pointed out above, could it be validated in any way by further actions on the part of the State Legislature or the 22nd District? In my opinion, the answer is NO.

The Supreme Court of California in *Miller vs. McKinnon* (1942) 20 Cal. (2d) 83, 124 Pac. (2d) 34, said:

“ ‘Certain general principles have become well established with respect to municipal contracts, and a brief statement of these principles will serve to narrow the field of our inquiry here. The most important one is that contracts wholly beyond the powers of a municipality are void. They cannot be ratified; no estoppel to deny their validity can be invoked against the municipality; and ordinarily no recovery in quasi contract can be had for work performed under them. It is also settled that the mode of contracting, as prescribed by the municipal charter, is the measure of the power to contract; and a contract made in disregard of the prescribed mode is unenforceable.’ ”

20 Cal. (2d) 83, 88.

The extra session of the Legislature which took place in 1938 amended Section 87 of the Agricultural Code, subdivision (d) to read as follows:

“(d) Arrange for and conduct or cause or by contract permit to be conducted by any other institution, corporation or association, upon its property at such time as they may deem advisable, any agricultural, horticultural, viticultural, or live stock fairs or expositions, circus, floral displays, exhibitions of industries and industrial products.

“An agricultural association shall not lease its race track, for running races of horses, to any private person, firm or corporation except to a national or international exposition or its affiliated corporations or associations for the period of time now permitted by law for fairs. The provisions of this subdivision shall not apply to existing leases or extensions or renewals thereof.”

Statutes, Extra Session 1938, Ch. 15, p. 93-94.

The above amendment expressly prohibits Boards of Directors of Agricultural fair districts from leasing race tracks to private firms, and authorizes leases to others only during fair time. But the last sentence stays application of the prohibition “to existing leases or extensions or renewals thereof.”

It might be said that by use of the word "existing" the Legislature meant only leases which had validity and hence existing force and effect. The Legislature, however, has power to enact curative laws to give effect to past transactions under some circumstances. See for examples 11 Cal. Jur. (2d), Constitutional Law, Section 230, p. 653-655; 45 Cal. Jur. (2d), Statutes, Section 12, p. 542-543. However, assuming the Legislature intended this sentence as curative, it was ineffective for this purpose, for, as already noted, the lease to the Turf Club was prohibited by the Agricultural Code as it existed prior to the amendment. In *People vs. Town of Corte Madera* (1952) 115 Cal. App. (2d) 32, 251 Pac. (2d) 988, the District Court of Appeals said:

"* * * A curative statute may operate to cure any procedural irregularity—even one going to jurisdiction—but it cannot operate to breathe life into a proceeding, the very filing of which is prohibited by statute. As the United States Supreme Court declared in *Turpin vs. Lemon*, 187 U.S. 51, 57 (23 S. Ct. 20, 47 L.Ed. 70), quoting from Cooley, 'Curative laws may heal irregularities in action, but they cannot cure want of authority to act at all.' In the instant case, the subsequent proceedings were void in their inception. The prior proceeding was entitled to priority under the law. No statute of limitations nor so-called curative statute can breathe not only life, but priority, into a subsequent annexation proceeding. To so hold would be to violate the statutory policy and common law of this state."

115 Cal. App. (2d) 32, 40-41.

This statement is probably even a broader one of the curative power than the law admits. Earlier, in *Miller vs. McKenna* (1944) 23 Cal. (2d) 774, 147 Pac. (2d) 531, the Supreme Court omitted the possibility of breathing life by legislation in what failed for lack of jurisdiction originally.

Additionally, this last sentence of the amendment has no affirmative words common to a curative enactment, such as "are hereby affirmed, validated and legalized", but is couched entirely as an exception to a general prohibition. The policy of the legislature is plainly one to bar such leases, not to give effect to those of them which are without validity. Hence, the exception is to be strictly construed to accomplish this policy and cannot have curative effect. In *re Goddard* (1937) 24 Cal. App. (2d) 128, 74 Pac. (2d) 549.

3. What effects, if any, would the various Memorandums of Agreements (Exhibits 2(a), (b), (c) and (d), Exhibits 3, 4, 5, and Exhibits 6(a), (b), (c) and (d)) between the 22nd District and Turf Club after December 8, 1936, have upon the legality of their relationships? In my opinion, the answer is to further demonstrate the illegalities.

The amendment to Section 87 of the Agricultural Code forbidding race track leases to private parties took effect immediately upon its approval by the Governor and filing with the Secretary of State on April 8, 1938. Thereafter, on July 11, 1938, the 22nd District and the Turf Club entered into a Memorandum of Agreement (annexed as Exhibit 3) modifying their Franchise Agreement (Exhibit 1) in several

major respects. It was acknowledged that the 22nd District owed the Turf Club \$491,663.82 "as a result of loans", and that the rental and other payments under the "Franchise Agreement" (Exhibit 1) are to be used to repay this sum. Then the Turf Club was given carte blanche to do whatever construction or repair work on the fair grounds it saw fit and to "supervise and police the racing unit at all times." While the "right to repayment" from the 22nd District for expenditures made on such matters was "waived", a subsequent Memorandum of Agreement (annexed as Exhibit 4) dated February 5, 1945, contains the following:

"Some misunderstanding has existed between the District and the Turf Club respecting expenditures made by Turf Club for alterations and additions to existing buildings on the Del Mar Fair Grounds. Hereafter, no expenditures which Turf Club expects to recoup from the district shall be made without the prior approval, in writing, of the District and the Department of Finance of the State of California. It is understood and agreed that a further consideration for the granting of the renewal and extension of said franchise agreement the Turf Club hereby promises and agrees to expend at its own cost and expense wholly the sum of not less than Fifty Thousand and no/100 (\$50,000.00) Dollars, in permanent improvements of the premises of the said District, such sum to be expended within a period of fifteen (15) years, commencing with the first succeeding race meeting after date of this agreement. It is understood and agreed that this amount is solely a consideration and is not to be charged to the said District nor against it in any manner whatsoever. It is further agreed that the Turf Club shall make no permanent improvements to the premises, additions to existing buildings or erect any structures on the Del Mar Fair Grounds, even at its own expense, without the prior written approval of the District and the Department of Finance of the State of California."

This instrument (Exhibit 4) also acknowledged the 22nd District owed the Turf Club \$275,000.00 as of September, 1944.

Section 86(b) of the Agricultural Code puts upon a District Agricultural Association the responsibility of beautifying and improving its real property, and Section 87 makes the Directors responsible for management. These may not be passed on to a private corporation. Substantially an identical situation was presented in *Stowe vs. Mazy* (1927) 84 Cal. App. 532, 258 Pac. 717. The County of San Joaquin owned a fair ground known as Agricultural Park. In the years 1920 through 1925 a private corporation known as San Joaquin County Fair Association conducted public fairs there and constructed buildings and other improvements, the cost of which it offset against gate receipts. It presented the County with a bill for \$15,000.00, being the excess of construction costs at the fair grounds over receipts for the years 1924 and 1925. The Board of Supervisors passed a resolution of approval, reciting the expenditures as proper county obligations in discharge of its agricultural fair powers as set out in Sections 4041, et seq., of the old Political Code. A taxpayer's suit to enjoin issuance of

a warrant for this \$15,000.00 was successful, the District Court of Appeal, Third Appellate District saying:

"The entire transcript in this case shows that the board of supervisors delegated its authority to a private corporation, even if we assume that it had authority to expend the money in the first instance. In making this statement, we must disregard what we have heretofore said, that the transcript shows no compliance with the law relative to the raising of money for the purposes of holding a county fair. That boards of supervisors may not delegate the performance of acts involving an exercise of judgment or discretion, see, also, 15 Corpus Juris, 465; Mechem on Agency (2d) Ed., p. 84, par. 124.

"We see no escape from the conclusion that the board of supervisors had no authority to delegate to the San Joaquin Fair Association, a private corporation, the performance of the acts which it did perform so as to render the county liable for any deficiency between the receipts and expenditures of such private concern in the handling of a county fair. Having no authority to make the delegation, the ratification is absolutely void."

258 Pac. 717, 723.

Chronologically, should next be treated the Lease for non-racing purposes dated June 1, 1943 (annexed as Exhibit 5), but leaving that out of account for the moment and passing to the Memorandum of Agreement dated February 5, 1945 (Exhibit 4), clearly, in my opinion, at this point the parties entered into a statutorily forbidden relationship. Paragraph 2 of this Memorandum of Agreement (Exhibit 4) provides:

"2. The original franchise agreement dated the 8th day of December, 1936, specifically states the expiration date of said franchise agreement to be the 31st day of December, 1946. It being no fault of Turf Club that because of the War it has been unable to procure racing dates (there having been five (5) consecutive race meetings conducted by Turf Club under the franchise agreement), it is understood and agreed by the parties hereto that the original franchise will be extended for the five (5) remaining consecutive race meetings thereunder commencing with the first succeeding race meeting after date of this agreement."

This purported extension, in my opinion, was no other than a new leasing made in the face of the flat statutory prohibition of Section 87 of the Agricultural Code. Indeed, the Franchise Agreement dated December 8, 1936 (Exhibit 1) purportedly so extended, expressly provides in paragraph 10:

"* * * It is understood and agreed by the parties hereto, however, that this franchise agreement shall terminate and become null and void and of no further force or effect if for any reason Del Mar Turf Club is unable to obtain from the California Horse Racing Board a license to conduct race meetings at said racing plant hereinabove referred to."

Thus, if the parties were continuing to abide by their Franchise Agreement (Exhibit 1), that Agreement automatically terminated when Turf Club was unable to obtain licenses for three consecutive years. In this connection, it also is material now to note the Memorandum of Agreement of June 1, 1943 (annexed as Exhibit 5). The 22nd District and Turf Club expressly modified the Franchise Agreement (Exhibit 1) so as to substitute manufacture of air craft parts for horse racing during the War years as Turf Club's activity on the premises. Thus, for these racing seasons that the Turf Club was unable to obtain licenses to conduct race meetings, it used the 22nd District's fair ground site as a place for the manufacture of air plane parts. It may be assumed that standing independently, the Memorandum of Agreement of June 1, 1943 (Exhibit 5), was a valid lease under sections 86(c) of the Agricultural Code as these provisions were amended by Statutes 1943, Chapter 388, page 1905, effective May 13, 1943. It (Exhibit 5) substitutes the manufacture of air plane parts for race meetings by consent of the landlord as permissible use of the premises and prevented War emergency or any other event beyond control of the parties from affecting the running of the term of the Franchise Agreement (Exhibit 1) or kept it from automatically expiring by December 31, 1946, which was the last day of the stated term. *Lloyd vs. Murphy* (1944) 25 Cal. (2d) 48, 153 Pac.(2d) 47.

It is also significant to note that the Franchise Agreement of December 8, 1936 (Exhibit 1) which established the option for an additional term of ten years, and which Turf Club purported to exercise in the Memorandum of Agreement of February 5, 1945 (Exhibit 4), couched the option in the following language:

"* * * In the event the party of the second part has, upon the completion of the said ten year term, carried out all of the terms and provisions of this franchise, the said party of the second part shall have, and it is hereby granted, an option for the renewal of the said franchise for an additional term of ten (10) years upon the payment of the sum of one hundred thousand dollars (\$100,000.00) as consideration for said additional term of ten (10) years, together with the payment of the percentage of pari-mutuel receipts, as in Paragraph 8 provided; (This option to be available to party of the second part only in the event that the California Legislature shall not prior to the expiration of said ten year period have by appropriate legislation deprived Twenty-Second District Agricultural Association of the power to enter a franchise agreement of the nature contemplated by said option.) provided further, however, in the event the party of the first part shall at the end of said first ten year term receive a bona fide offer in writing from a person, firm or corporation for a franchise at a greater sum than herein specified, the party of the second part shall be required, in the event party of the second part desires to exercise its option for the renewal of said franchise for an additional term of ten (10) years, within thirty (30) days after notice to it in writing of such offer, to notify party of the first part that it will pay the higher rental provided and set out in such offer. * * *"

Exhibit 1, par. 1, pp. 3-4.

It is at once apparent that the parties expressly contemplated legislation which would make the leasing of the fair grounds unlawful, and provided that the option would not exist if such legislation was enacted. The State Legislature did make the leasing unlawful at the Special Session in 1938 by what is now part of Section 87 of the Agricultural Code.

It is also evident that the option in the original lease (Exhibit 1) was to have an important feature common to public contract legislation; that is, requiring the optionee to meet the best offer from others. By the Memorandum of Agreement of February 5, 1945 (Exhibit 4), the parties deleted this material feature of the option. No one who might be interested was given an opportunity to make a bona fide offer. This adds force to the conclusion that the parties were not continuing or renewing the original lease (Exhibit 1), but were embarking upon a new leasing arrangement.

4. Is the "Franchise Agreement Extension" (annexed as Exhibit 7) of August 17, 1953, valid? In my opinion, the answer is NO.

Because of the many modifications of the Franchise Agreement of December 8, 1936 (Exhibit 1) which took place over the years, the additional term of ten years given to the Turf Club in February of 1945 (Exhibit 4) giving the Turf Club exclusive jurisdiction of the track until December 31, 1959, did not amount to either an extension or a renewal of the Franchise Agreement (Exhibit 1) of 1936. The Franchise Agreement of December 8, 1936 (Exhibit 1), as already shown, had ceased to be the legal relationship between the parties. Following the document of February 5, 1945 (Exhibit 4), the parties made any number of additional modifications of their relationships governing such matters of insurance, construction of additional facilities by the Turf Club, and the like, until August 17, 1953. These various modifying "Memorandums of Agreements" are annexed hereto as Exhibits 6(a), (b), (c) and (d). On August 17, 1953, an entirely new instrument called "Franchise Agreement Extension" (annexed as Exhibit 7) was entered into whereby the term of the original Franchise Agreement (Exhibit 1) was extended to December 31, 1969. This document (Exhibit 7) also made "available for use by the Turf Club on a permanent year around basis" certain facilities of the 22nd District and obligated the Turf Club to maintain portions of the fair grounds "on a year around basis" for which the District undertook to pay it \$35,000.00 annually commencing January 1, 1954. The Turf Club was expressly exonerated from responsibility for replacements or repair unless the destruction of property resulted from its own negligence. The operations of Turf Club were, by paragraph 5 of this document, restricted to race meetings. However, by paragraph 7 it was given the "exclusive right . . . for all activities generally or commonly connected with horse racing" which, of course, includes renting concessions, parking facilities, sale of programs, sale of foods and beverages, renting seat cushions, etc. By this same paragraph, Turf Club "agrees to pay as rental for said premises" nineteen and one-half percent ($19\frac{1}{2}\%$) of its share of the receipts from wagers during 1953, fifteen and one-half per cent ($15\frac{1}{2}\%$) during 1954, and thereafter twelve and one-half per cent ($12\frac{1}{2}\%$). The 22nd District, for its part, undertook to expend one million dollars for improvement of the race track facilities, which moneys it is to receive in

the form of advances on rentals from Turf Club. Turf Club is given an actual voice in plans and specifications for these improvements. By paragraph 12, the Franchise Agreement Extension (Exhibit 7) supercedes the Franchise Agreement (Exhibit 1) wherever there is any conflict in provisions. This last clause alone serves to demonstrate that it was neither an extension nor a renewal of the Franchise Agreement of 1936, as well as does the absence of any resemblance between the comparative rights and obligations of the parties under those two documents.

5. What effect would the approvals of the Department of Finance have upon the various instruments executed by the 22nd District and Turf Club? In my opinion the answer is NONE.

It appears that the Franchise Agreement of December 8, 1936 (Exhibit 1), as well as Franchise Agreement Extension (Exhibit 7) and various intermediate Memorandums of Agreements (Exhibits 2(a), (b), (c) and (d), 3, 4, 5, and 6(a), (b), (c) and (d)) were "approved" by the Department of Finance. The scope or extent of these approvals is nowhere disclosed. Neither is the occasion for obtaining the approvals. However, Section 13109 of the Government Code as it existed prior to September 1955, read as follows:

"With the consent of the State agency concerned, the Director may let for a period of not to exceed five years, any real or personal property which belongs to the State, the letting of which is not expressly prohibited by law, if he deems such letting is in the best interests of the State."

The 1955 amendment to this Section of the Government Code did not change the five-year limitation on terms of leasing. Of course, the Department of Finance was never intended as the landlord in any of the documents entered into by the 22nd District and Turf Club, but if such an intention were advanced this five-year limitation upon the permissible term alone would take the so-called franchise outside the power of the Director of Finance to make. A more likely explanation is that the approval of the Department of Finance was sought because that Department has a general physical supervision over Agriculture affairs under the provisions of Section 91 and 92 of the Agricultural Code.

6. What was the status of Turf Club, and what is the status of its present transferees with respect to the 22nd District and the District's fair grounds? In my opinion, the answer is they were and are trespassers.

On July 26, 1954, Turf Club entered into a Sub-Franchise Agreement (annexed hereto as Exhibit 8) with a California corporation named Operating Company. Turf Club purported to transfer, with approval of the 22nd District, all of its right to the fair grounds under both the Franchise Agreement of December 8, 1936 (Exhibit 1), and the Franchise Agreement Extension of August 17, 1953 (Exhibit 7). By this instrument (Exhibit 8), Operating Company undertook to perform all of the obligations of Turf Club with respect to the 22nd District, and also to honor various subleases and contracts of Turf Club, and undertook to conduct a racing season just as was previously done by Turf Club. Operating Company also undertook to pay ninety per cent (90%) of the profits from wagers and other sources of revenue

to Turf Club as "additional rentals", and the further sum of \$257,-401.00 declared to be the balance on construction loans due to Turf Club from the 22nd District. At the same time, the Turf Club executed an "Assignment and Grant Deed" (annexed hereto as Exhibit 9), whereby it transferred to Boys Incorporated of America, a Delaware corporation, the Franchise Agreement (Exhibit 1), Franchise Agreement Extension (Exhibit 7), and the Sub-Franchise Agreement (Exhibit 8), along with various other interests "in consideration of the sum of \$250,000.00."

It is apparent that both Operating Company and Boys Incorporated of America could have no better status under the law with respect to 22nd District and its fair grounds than would Turf Club. This status, as has already been shown, was that of a private corporation in possession of public property under a void claim of leasehold.

It is a long-established view that a party in possession of public lands under color of a void instrument is a trespasser. *McCracken vs. City of San Francisco* (1860) 16 Cal. 591. The measure of damages for a continuing trespass is that set out in Section 3334 of the Civil Code of California, as follows:

"Wrongful Use or Occupation of Land.—The detriment caused by the wrongful occupation of real property, in cases not embraced in sections three thousand three hundred and thirty-five, three thousand three hundred and forty-four, and three thousand three hundred and forty-five of this code, or section eleven hundred and seventy-four of the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession."

Herond vs. Bonsall (1943) 60 Cal.App.(2d) 152, 140 Pac.(2d) 121, is a case where a landowner sued for damages for occupation of property by storing materials upon it. In affirming judgment in the landowner's favor against a claim of license, the Appellate Court said:

"An action will lie for recovery of the reasonable value of the use and occupation of real property irrespective of the question of whether or not the use thereof by the occupant was tortious or wrongful. In such a case the tort, if any, may be waived and an action based upon implied assumpsit is maintainable to recover the value of the use of the real property for the time of such occupation, where no special damages are sought. A landowner instituting such a suit need only allege his ownership of the land, occupation of such land by the defendant, the reasonable value of the use of the property for the period of occupation, and that such sum is unpaid (*Richmond Wharf & Dock Co. v. Blake*, 181 Cal. 454, (185 P. 184); *Taggart v. Shepherd*, 122 Cal. App. 755 (10 P. 2d 808); *Samuels v. Singer*, 1 Cal. App. 2d 545, 552, 553 (36 P. 2d 1098)). For a continuing trespass, section 3334 of the Civil Code prescribed the measure of damage."

60 Cal. App. (2d) 152, 155-156.

The various concessionaires such as the food concessionaire, in possession of various portions of the fair grounds and facilities, it is believed share the identical position with that of the purported lessees who put the concessionaires into possession. They likewise, in my opinion, are trespassers and subject to the same measure of damages in liability for their trespasses as are Turf Club, Operating Company and Boys Incorporated of America.

There is no basis formulated at this time for determining what was the value of the use of the property of the 22nd District during the various periods of occupation by these parties. However, the staff report on management examination of the 22nd Agricultural District transmitted to the Senate Fact-Finding Committee on Governmental Administration on November 30, 1959, points out that the rentals received by the 22nd District fell very short of the reasonable value of the use of the property over the years by Turf Club and more recently by its transferees. This report contains comparisons, for example, of what the 22nd District received from the Turf Club and its assigns and what other agricultural fair districts in California get for use of just their racing facilities alone. On page 29 of this staff report, is the conclusion: "The State simply has failed to obtain reasonable and fair payments for the facilities provided." On page 34 is the following:

"A comparison with other Districts as reported by the Division of Audits shows utility costs in other Districts to be below the 22nd despite the fact that many have larger plants and more interim activity. * * *"

and

"Other costs to the District chargeable to its costs of renting the race track are represented in the excessive preparations and clean-up costs coincident with the fair. * * *"

On pages 39 and 40 of the staff report, the following appears:

"* * * First, I don't believe that by a reasonable valuation of the investment involved and any reasonable rate employed the 22nd District Agricultural Association is receiving an adequate rate on the value of property. * * *"

7. What legal proceedings, if any, may be taken on behalf of the 22nd District for relief or correction? In my opinion:

(1) proceedings in declaratory relief are proper seeking to have the Franchise Agreement, the Franchise Agreement Extension, the Sub-Franchise Agreement, and the Assignment and Grant Deed declared invalid, along with the various questioned leases and sub-leases and contracts to concessionaires and others made under them; together with

(2) proceedings for damages and trespass against the various unauthorized occupiers of the fair ground site.

Respectfully submitted,

(Signed)

ALBERT E. SHEETS
Special Counsel
Senate Fact-Finding Committee
on Governmental Administration

Exhibit 1
FRANCHISE AGREEMENT

THIS AGREEMENT, made and entered into this 8th day of December, 1936, by and between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, of San Diego, California, hereinafter designated as the party of the first part, and DEL MAR TURF CLUB, a California corporation, hereinafter designated as the party of the second part, sometimes hereinafter referred to as Del Mar Turf Club,

WITNESSETH :

WHEREAS, the party of the first part has been granted the sum of five hundred thousand six hundred sixty-six dollars (\$500,666.00) by the Works Progress Administration of the United States of America for the purpose of constructing a race track, fair grounds, grandstands, stables and other buildings; and

WHEREAS, the work of constructing said race track, fair grounds, grandstands, stables and other buildings is now in progress; and

WHEREAS, the party of the second part desires to secure a franchise from the party of the first part for the purpose of conducting a race meeting or meetings, pursuant to the rules and regulations and with the approval of the California Horse Racing Board, and all activities commonly or generally connected therewith.

NOW, THEREFORE, in consideration of the covenants to be mutually performed by each of the parties to this agreement, it is hereby agreed as follows:

1. The party of the first part hereby agrees, and does hereby grant to, the party of the second part a franchise for the purpose of conducting, holding, operating and maintaining a race meeting or meetings, and all activities commonly or generally connected therewith, upon the grounds belonging to the party of the first part upon which are now being constructed a race track, grandstands and other buildings under the grant heretofore referred to, said franchise to be exercised by the party of the second part for such periods of time each year (not exceeding in the aggregate sixty (60) days in any one year), and under such rules and regulations as the California Horse Racing Board may provide from time to time, and for an additional period of thirty (30) days prior to, and subsequent to, each of such periods designated by said California Horse Racing Board, said franchise to extend over a term of ten (10) years, beginning the first day of January, 1937, and ending the thirty-first day of December, 1946. It is the intention of this agreement that dates upon which are to be held the annual fair and races sponsored by the party of the first part shall not conflict with dates allotted party of the second part by the California Horse Racing Board for any of its race meetings. The party of the second part on or before March 1 in each year shall notify the party of the first part of the dates allotted to it by the California Horse Racing Board for the

holding of its race meeting for that year. In the event the date of a fair to be held by the party of the first part falls within the thirty (30) day period subsequent to a race meeting to be held by party of the second part, the latter agrees to vacate the track and facilities within one (1) week following its race meeting. For a period of two (2) weeks prior to the date selected for said annual fair, persons authorized by the party of the first part shall have reasonable right of ingress and egress to the Exhibit Building for the purpose of placing exhibits. In the event the party of the second part has, upon the completion of the said ten year term, carried out all of the terms and provisions of this franchise, the said party of the second part shall have, and it is hereby granted, an option for the renewal of the said franchise for an additional term of ten (10) years upon the payment of the sum of one hundred thousand dollars (\$100,000.00) as consideration for said additional term of ten (10) years, together with the payment of the percentage of pari-mutuel receipts, as in Paragraph 8 provided; (This option to be available to party of the second part only in the event that the California Legislature shall not prior to the expiration of said ten year period have by appropriate legislation deprived Twenty-Second District Agricultural Association of the power to enter a franchise agreement of the nature contemplated by said option.) provided further, however, in the event the party of the first part shall at the end of said first ten year term receive a bona fide offer in writing from a person, firm or corporation for a franchise at a greater sum than herein specified, the party of the second part shall be required, in the event party of the second part desires to exercise its option for the renewal of said franchise for an additional term of ten (10) years, within thirty (30) days after notice to it in writing of such offer, to notify party of the first part that it will pay the higher rental provided and set out in such offer. The party of the first part agrees that it will not do any act which may cause the California Horse Racing Board to decrease to less than twenty-five the number of racing days which may be allowed to Del Mar Turf Club under the laws of the State of California, it being understood that the execution of this franchise agreement shall in nowise prevent the party of the first part from using its fair grounds for the purpose of holding annually thereon a fair (including harness and running races with pari-mutuel betting) during July or August each year if the party of the first part shall select a period falling within either of said months; (provided, however, the time selected shall not conflict with the time specified in the notice given by party of the second part heretofore referred to in this Paragraph 1).

2. The party of the second part shall have the right, during the periods for which provision has been made for the use of said grounds by the party of the second part, to have the exclusive use and control of the fair grounds, race tracks, grandstand, stables, concession spaces and buildings, save and excepting the exhibit buildings and administrative offices of party of the first part, it being the intention by the provisions of this franchise that during the period of any race meeting neither party of the first part nor anyone licensed by it shall have any right to conduct any business within said fair grounds at which commodities of any sort are vended, sold or disposed of or at which any admission whatever is charged, received or collected.

3. The party of the first part agrees within ninety (90) days from the execution of this franchise agreement to complete (or furnish evidence that the same can and will be completed within sixty (60) days after said ninety (90) day period) the following buildings to specifications of the Works Progress Administration of the United States of America which have been agreed upon, to wit: A grandstand, club house, receiving barn, nine hundred (900) stalls each 12 feet x 12 feet, with ample walking area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, offices for officials at the track, offices for California Horse Racing Board and executives of Del Mar Turf Club. If for any reason said buildings are not completed by the party of the first part within the time hereinabove specified, Del Mar Turf Club reserves the right to complete said buildings at said race track substantially in accordance with said specifications, as in its judgment seems proper, to hold its race meetings thereafter, and to reimburse itself for any moneys expended under the provisions of this paragraph out of any moneys payable to party of the first part under the terms of this franchise agreement and out of any moneys which may be appropriated by the California Legislature and legally expendable by Twenty-Second District Agricultural Association for construction work or improvements.

4. The party of the second part shall not permit any activities upon or in the said premises, while in the possession of the party of the second part, that are not permitted or authorized by the laws of the State of California, and upon conviction of any such violation of said laws, this franchise shall terminate, unless such condition is immediately remedied, provided, however, that in the event such violation results in the cancellation of the license of the party of the second part to hold race meetings at such track, this franchise shall be forfeited, unless reinstatement of such license is obtained more than six (6) months prior to the dates designated by the California Horse Racing Board for the holding of the next succeeding race meeting.

5. The party of the second part agrees to hold the party of the first part harmless from, and indemnify it for, any and all injuries to persons coming upon the said property, and for injuries to property belonging to the party of the first part, or other property coming upon the grounds of the party of the first part during such periods of time as the party of the second part shall be in control, or possession of said premises, and for this purpose shall carry compensation and liability insurance to cover any and all losses or claims that may be made against the parties to this franchise for injuries to persons or property, the amount of such policies of insurance and the terms and provisions thereof to be subject to the approval of the party of the first part. It is understood, however, that protection against loss by fire shall be provided by insurance carried by the party of the first part.

6. The party of the second part hereby agrees to pay all costs of operating said grounds, buildings and equipment, including the payment of all water and electricity and janitor services, while in possession thereof. The party of the first part agrees to deliver said premises to the party of the second part each time the party of the second part is entitled to go into possession under the terms of this franchise in good condition and repair, and the party of the second part agrees to re-

deliver said premises to the party of the first part each year at the close of the period of use by the party of the second part in as good condition and repair as it was received by the party of the second part, reasonable wear, tear and damage by the elements and acts of God excepted.

7. The party of the first part shall have the right, through its officers and agents, of access to all parts of said premises while used and operated by the party of the second part at all reasonable times for the purpose of inspection, and for the purpose of reasonable ingress to and egress from the exhibition space in the fair grounds. Such right of inspection shall conform to times fixed by the party of the second part and shall not provide an occasion for attendance at the races. During any race meet the party of the first part shall have no right to visit the part of the grounds known as the Turf and Field Club. The party of the second part agrees that all activities to be conducted on said premises by the party of the second part shall be on a high plane and in conformity with good showmanship and of a high moral standard in conformity with the rules and regulations of the California Horse Racing Board.

8. The party of the second part agrees to pay to the party of the first part for the purchase of this franchise the sum of one hundred thousand dollars (\$100,000.00), (thirty-five thousand dollars (\$35,000.00) of which has heretofore been paid) and the said party of the second part further agrees to pay as additional consideration for the granting of this franchise a sum, to be known as rental of said premises, equal to twelve and one-half per cent ($12\frac{1}{2}\%$) of the total moneys received by Del Mar Turf Club as its share of moneys wagered in pari-mutuels each day of racing conducted by the party of the second part, said percentage of said total moneys wagered to be paid to the party of the first part at the end of each racing day.

9. It is understood and agreed that it is impossible to ascertain the damage, if any, sustained by the party of the first part for the failure of the party of the second part to carry out the provisions of this franchise, or to carry on race meetings upon the premises of the party of the first part, and in the event the said party of the second part fails for two (2) years to carry out the provisions of this franchise, or to carry on said race meetings on the said premises, then and in that event this agreement shall become null and void, this franchise shall terminate, and any and all payments which may have been made to the party of the first part, together with moneys expended for improvements, additions and betterments to the premises of the party of the first part, shall be considered liquidated damages and shall be and become the property of the party of the first part.

10. This franchise agreement shall be delivered to Del Mar Turf Club, party of the second part, upon its execution by the parties hereto and approval by the Finance Department of the State of California. It is understood and agreed by the parties hereto, however, that this franchise agreement shall terminate and become null and void and of no further force or effect if for any reason Del Mar Turf Club is unable to obtain from the California Horse Racing Board a license to conduct race meetings at said racing plant hereinabove referred to. Said Del Mar Turf Club agrees that upon receiving this franchise executed and approved as aforesaid, it will use all convenient speed to make applica-

tion to the California Horse Racing Board for a license to conduct its race meeting at said racing plant for the year 1937 and that upon receipt of a license from said California Horse Racing Board to so conduct said meeting will pay, or cause to be paid, the Twenty-Second District Agricultural Association the balance of the consideration, to wit, \$65,000.00, for said franchise.

11. If for any reason Twenty-Second District Agricultural Association shall become bound to return or pay moneys to Del Mar Turf Club under the terms of this franchise agreement, such liability shall only be discharged by payment to Del Mar Turf Club of moneys which may be appropriated to the use of Twenty-Second District Agricultural Association by the California Legislature and by the retention by Del Mar Turf Club of the share of pari-mutuel wagers to which Twenty-Second District Agricultural Association is, or may be, entitled.

12. The party of the first part agrees to keep all of the buildings comprising said race track in proper repair at all times, excepting only any damage caused by second party or occasioned by the use of said buildings by party of the second part during any race meeting, which said damages the party of the second part agrees to repair. The party of the first part agrees to keep said buildings insured against loss from damage by fire during the period of this franchise. In the event of loss or damage by fire or other elements, which loss is covered by insurance, the party of the first part agrees to rebuild said buildings insofar as the recovery under its insurance policies shall pay for the cost of such rebuilding. The party of the first part agrees during the first year of this franchise, and at least thirty (30) days prior to the first race meeting held by party of the second part, to spend the sum of ten thousand dollars (\$10,000.00) for the purpose of improving and beautifying the grounds in, on and about said track, to the end that the portion of the track known as the infield shall be in a clean, neat, orderly and usable condition, and, as well, to spend during the term of this franchise, annually, such amount as shall reasonably be required to keep said track in first-class, neat, orderly and usable condition. In the event of the failure of party of the first part to expend the sums provided to be expended by the preceding sentence, party of the second part, to the extent of such failure, shall have the right to expend such sums as in its judgment shall be required for the purpose of improving and beautifying the grounds in, on or about said track, so that the same will be in a clean, neat, orderly and usable condition; provided, however, that without the written consent of the party of the first part said Del Mar Turf Club beginning with the second year of the term of this franchise agreement shall not expend for such purposes more than the sum of five thousand dollars (\$5,000.00) in any one year. This privilege shall be available to party of the second part during the period of this franchise. Any moneys expended by party of the second part for the purposes provided by this Paragraph 12 shall be recovered by party of the second part from Twenty-Second District Agricultural Association in the manner specified in Paragraph 11 of this franchise agreement. Party of the first part agrees as well to pay all of the expenses incidental to the upkeep of said grounds, except during the period of race meetings held by party of the second part.

13. The Department of Finance of the State of California shall have the right to make audits of the accounts of either or both of the parties to this agreement. Audits of the books of the party of the second part shall be conducted in such manner and at such times as shall in nowise interfere with the conduct of a race meeting. Each party to this agreement hereby consents to delivery to the other party of a copy of any audit made by any state department or agency or by any accountant.

14. Party of the second part shall have no power to assign, transfer or convey this franchise agreement without the prior written consent first had and obtained of Twenty-Second District Agricultural Association with the approval of the Finance Department of the State of California.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by signatures thereto of their duly authorized officers on the day hereinabove appearing.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION,

By (s) JAMES E. FORWARD
Its President

ATTEST:

(s) D. A. NOBLE
Its Secretary

(Party of the First Part)

DEL MAR TURF CLUB,

By (s) HARRY L. CROSBY, JR.
Its President

And (s) E. CROSBY
Its Secretary

(party of the Second Part)

Exhibit 2(a)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into this 22nd day of January, 1937, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, of San Diego, California, herein designated as first party and DEL MAR TURF CLUB, a California Corporation, of San Diego, California, herein designated as second party, and sometimes hereinafter referred to as Del Mar Turf Club.

WITNESSETH:

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein first party is referred to as party of the first part and second party is referred to as party of the second part; and

WHEREAS, among other things, said agreement in paragraph 3 thereof provided as follows:

"3. The party of the first part agrees within ninety (90) days from the execution of this franchise agreement to complete (or furnish evidence that the same can and will be completed within (60) days after said ninety (90) day period) the following buildings to specifications of the Works Progress Administration of the United States of America which have been agreed upon, to wit: A grandstand, club house, receiving barn, nine hundred (900) stalls each 12 feet x 12 feet, with ample walking area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, offices for officials at the track, offices for California Horse Racing Board and executives of Del Mar Turf Club. If for any reason said buildings are not completed by the party of the first part within the time herein above specified, Del Mar Turf Club reserves the right to completed said buildings at said race track substantially in accordance with said specifications, as in its judgment seems proper, to hold its race meetings thereafter, and to reimburse itself for any monies expended under the provisions of this paragraph out of any monies payable to party of the first part under the terms of this franchise agreement and out of any monies which may be appropriated by the California Legislature and legally expendable by Twenty-Second District Agricultural Association for constructions work or improvements."

and

WHEREAS, Del Mar Turf Club has been notified by first party that first party, without assistance, is unable within the period specified in said paragraph 3, to complete the buildings and improvements referred to therein or furnish evidence that the same can or will be completed,

but that with some assistance financially first party believes that it will be able to complete said improvements; and

WHEREAS, first party desires to borrow from second party the sum of twenty thousand dollars (\$20,000.00) to be supplied by second party in amounts as follows: Seventy-five hundred dollars (\$7500.00) upon execution of this agreement and its approval by the Finance Department of the State of California; seventy-five hundred dollars (\$7500.00) February 1, 1937 and five thousand dollars (\$5000.00) February 15, 1937, said sum to be repayable to second party in the manner specified in said paragraph 3 hereinabove set forth; and

WHEREAS, it appears to the parties to this agreement that the completion of said buildings in the manner contemplated hereby was not contemplated in the franchise agreement of December 8, 1936, and that it will be necessary to supplement the franchise agreement of December 8, 1936, in order to set forth the understanding of the parties hereto with respect to such loan:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, the parties hereto do hereby, without in any wise amending or changing the said franchise agreement, supplement said franchise agreement as follows:

1. Del Mar Turf Club will advance to first party the sum of twenty thousand dollars (\$20,000.00), seventy-five hundred dollars (\$7500.00) thereof payable upon the execution of this agreement and approval thereof by the Finance Department of the State of California, seventy-five hundred dollars (\$7500.00) payable February 1, 1937 and five thousand dollars (\$5000.00) payable February 15, 1937.

2. First party agrees that said sums of money totaling twenty thousand dollars (\$20,000.00) will be applied by it solely to the payment for materials and/or as sponsor's credits to the intent and with the effect that Works Progress Administration of the United States of America shall immediately commence the completion of the improvements referred to in said paragraph 3 of said franchise agreement.

3. Said sum of money shall be repayable to Del Mar Turf Club out of moneys payable to the first party under the terms of said franchise agreement and as well out of any moneys which may be appropriated to said first party, Twenty-Second District Agricultural Association for construction work or improvements.

4. This agreement supplements said franchise agreement only in the particulars in this memorandum of agreement set forth, but does not alter, change or amend said franchise agreement, it being understood that there are reserved to both parties to this agreement all of the rights and privileges contained in said franchise agreement of December 8, 1936.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by signatures thereto of their duly authorized officers on the day hereinabove appearing.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION

By (s) N. MATZEN
Its Vice President

ATTEST:

(s) D. A. NOBLE
Its Secretary

First Party

DEL MAR TURF CLUB

By (s) HARRY L. CROSBY, JR.
Its President

And E. CROSBY (s)
Its Secretary

Second Party

DEPARTMENT OF FINANCE

APPROVED
JAN. 25, 1937

(s)
Arlin E. Stockburger, Director

Exhibit 2(b)
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this 23rd day of February, 1937, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, herein sometimes referred to as "first party", and DEL MAR TURF CLUB, a California corporation, hereinafter sometimes referred to as "second party", and sometimes as "Del Mar Turf Club",

WITNESSETH:

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein Twenty-Second District Agricultural Association is the party of the first part and Del Mar Turf Club is the party of the second part; and

WHEREAS, among other things, said franchise agreement of the 8th day of December, 1936, in Paragraph 3 thereof provided:

"The party of the first part agrees within ninety (90) days from the execution of this franchise agreement to complete (or furnish evidence that the same can and will be completed within sixty (60) days after said ninety (90) day period) the following buildings to specifications of the Works Progress Administration of the United States of America which have been agreed upon, to wit: A grandstand, club house, receiving barn, nine hundred (900) stalls each 12 feet x 12 feet, with ample walking area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, offices for officials at the track, offices for California Horse Racing Board and executives of the Del Mar Turf Club. If for any reason said buildings are not completed by the party of the first part within the time hereinabove specified, Del Mar Turf Club reserves the right to complete said buildings at said race track substantially in accordance with said specifications, as in its judgement seems proper, to hold its race meetings thereafter, and to reimburse itself for any moneys expended under the provisions of this paragraph out of any moneys payable to party of the first part under the terms of this franchise agreement and out of any moneys which may be appropriated by the California Legislature and legally expendable by Twenty-Second District Agricultural Association for construction work or improvements."

and

WHEREAS, the parties to this agreement on the 22nd day of January, 1937, entered into a certain memorandum of agreement supplemental to said franchise agreement of the 8th day of December, 1936, which said memorandum of agreement supplemented said franchise agreement of the 8th day of December, 1936, in the particulars therein set forth but did not alter, change or amend said franchise agreement; and

WHEREAS, the parties to this agreement have both definitely concluded that first party without assistance is unable within the period specified

in said Paragraph 3 to complete some or all of the buildings or improvements in said Paragraph referred to or to furnish evidence that such buildings or improvements can or will be completed; and

WHEREAS, the parties hereto agree that with some assistance financially said first party may be able to complete said buildings or improvements in sufficient time to enable second party to conduct its racing meet for the 1937 season commencing July 3, 1937; and

WHEREAS, estimates prepared by architects employed by first party have been supplied the parties to this agreement showing the amount of money which must be contributed by first party as sponsor's funds towards the construction or improvement project contemplated by the Works Progress Administration of the United States of America involving the buildings or improvements hereinabove referred to; and

WHEREAS, said estimates so provided by said architects will entail the expenditure by first party of the following amounts to complete the buildings or improvements below tabulated:

| | |
|--|--------------------|
| Club house ----- | \$17,700.00 |
| Building to house jockeys and racing officials ----- | 4,100.00 |
| Saddling paddock ----- | 3,000.00 |
| Receiving barn ----- | 4,600.00 |
| 300 additional stalls in horse barns (making a total of 600 stalls) ----- | 10,400.00 |
| To complete two partially constructed permanent exhibit buildings ----- | 12,300.00 |
| 60,000 yards of dirt fill ----- | 8,100.00 |
| Landscaping to improve and beautify the grounds including the infield ----- | 1,500.00 |
| Total ----- | <u>\$61,700.00</u> |

and

WHEREAS, first party desires to borrow from second party the said sum of \$61,700.00 to be supplied by second party as the work hereinabove referred to progresses, installments as set forth in this agreement in Paragraph 1 below, provided this agreement is approved by the Finance Department of the State of California; and

WHEREAS, it appears to the parties to this agreement that the completion of said buildings or improvements in accordance with the terms of this agreement was not contemplated in the franchise agreement of December 8, 1936, nor by the terms of the memorandum agreement dated the 22nd day of January, 1937, hereinabove referred to, and that it will be necessary to supplement the understanding of the parties hereto, as set forth in the franchise agreement of December 8, 1936, and the said memorandum of agreement dated January 22, 1937, in order to set forth the understanding of the parties hereto with respect to the moneys contemplated to be loaned first party by second party:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The parties hereto do hereby, without however in anywise amending or changing the said franchise agreement of December 8, 1936, and without in anywise amending or changing said memorandum of agreement of January 22, 1937, supplement said franchise agreement and said memorandum of agreement as follows:

1. Upon the condition that this agreement shall first be approved by the Finance Department of the State of California, Del Mar Turf

Club will loan to first party the sum of \$61,700.00, payable as needed for the construction work involved in the buildings or improvements hereinabove in this agreement referred to.

2. First party agrees that said sums of money totaling \$61,700.00 will be applied by it solely to the payment for materials and labor as sponsor's credits upon the project now being performed by the Works Progress Administration of the United States of America at the fair-grounds at Del Mar, and being the buildings or improvements hereinabove in this agreement referred to.

3. First party agrees that it will submit to second party prior to the expenditure of any of the sums of money contemplated to be loaned first party a full statement of the purposes for which it is proposed to expend any of said moneys and that second party, prior to the advancement of moneys to first party under the terms of this agreement, shall have the right to approve or reject any item of expenditure which in the judgment of the second party will or will not contribute to the completion of the buildings or improvements hereinabove referred to.

4. The sum or sums of money hereinabove referred to totaling \$61,700.00 shall be repayable by first party to second party out of moneys payable to first party under the terms of said franchise agreement of December 8, 1936, and as well, out of any moneys which may be appropriated to the use of first party by the legislature of the State of California and available for construction work or improvements.

5. This memorandum of agreement supplements the agreements heretofore entered into between the parties hereto only in the particulars in this memorandum of agreement set forth but does not alter, change or amend the franchise agreement of December 8, 1936, hereinabove referred to, nor the memorandum of agreement dated January 22, 1937, hereinabove referred to, it being understood between the parties hereto that there are specifically reserved to both of the parties to this agreement all of the right and privileges (not inconsistent with this agreement) contained in said franchise agreement of December 8, 1936, and said memorandum of agreement dated January 22, 1937.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by the signatures thereto of their duly authorized officers on the day first hereinabove appearing.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION

By /s/ N. MATZEN

As its President

ATTEST:

/s/ D. A. NOBLE

As its Secretary

First Party.

DEL MAR TURF CLUB

By /s/ HARRY L. CROSBY, JR.

As its President

and E. N. CROSBY

As its Secretary

Second Party.

DEPARTMENT OF FINANCE

APPROVED

March 1, 1937

Exhibit 2(c)
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this 5th day of April, 1937, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, herein sometimes referred to as "first party," and DEL MAR TURF CLUB, a California corporation, hereinafter sometimes referred to as "second party," and sometimes as "Del Mar Turf Club,"

WITNESSETH :

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein Twenty-Second District Agricultural Association is the party of the first part and Del Mar Turf Club is the party of the second part; and

WHEREAS, among other things, said franchise agreement of the 8th day of December, 1936, in Paragraph 3 thereof provided :

"The party of the first part agrees within ninety (90) days from the execution of this franchise agreement to complete (or furnish evidence that the same can and will be completed within sixty (60) days after said ninety (90) day period) the following buildings to specifications of the Works Progress Administration of the United States of America which have been agreed upon, to wit: A grandstand, club house, receiving barn, nine hundred (900) stalls, each 12 feet x 12 feet, with ample working area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, offices for officials at the track, offices for California Horse Racing Board and executives of Del Mar Turf Club. If for any reason said buildings are not completed by the party of the first part within the time hereinabove specified, Del Mar Turf Club reserves the right to complete said buildings at said race track substantially in accordance with said specifications, as in its judgment seems proper, to hold its race meetings thereafter, and to reimburse itself for any moneys expended under the provisions of this paragraph out of any moneys payable to party of the first part under the terms of this franchise agreement and out of any moneys which may be appropriated by the California Legislature and legally expendable by Twenty-Second District Agricultural Association for construction work or improvements."

and

WHEREAS, the parties to this agreement on the 22nd day of January, 1937, entered into a certain memorandum of agreement supplemental to said franchise agreement of the 8th day of December, 1936, and on the 23rd day of February, 1937, entered into a memorandum of agreement further supplementing said franchise agreement of the 8th day of December, 1936, which said memoranda of agreement dated January 22, 1937 and February 23, 1937, only supplement said franchise

agreement of December 8, 1936 in the particulars in said memoranda set forth but do not otherwise alter, change or amend said franchise agreement; and

WHEREAS, estimates furnished by architects prior to the agreement of February 23, 1937 contemplated that the sum of \$61,700.00 should be contributed by first party as sponsor's funds toward the construction or improvement project contemplated by the Works Progress Administration of the United States of America involving the buildings or improvements referred to in said agreement of February 23, 1937; and

WHEREAS, due to unforeseen conditions, including increases in the cost of material and labor, said estimates have been revised by the architects and the sum of money required to be contributed as sponsor's funds and for other purposes necessary to complete the project hereinabove referred to, involve the sum of \$102,390.00; and

WHEREAS, first party desires to borrow from second party the sum of \$40,690.00 in addition to the sum of \$61,700.00 provided to be loaned pursuant to the memorandum of agreement dated February 23, 1937, said additional sum of \$40,690.00 to be supplied by second party as the work hereinabove referred to progresses, in payments as set forth hereinafter in Paragraph 1, provided this agreement is approved by the Finance Department of the State of California; and

WHEREAS, it appears to the parties to this agreement that the completion of said buildings or improvements in accordance with the terms of this agreement was not contemplated in the franchise agreement of December 8, 1936, nor by the terms of the memorandum agreement dated the 22nd day of January, 1937, nor by the terms of the memorandum agreement dated the 23rd day of February, 1937, and that it will be necessary to supplement the understanding of the parties hereto with respect to the additional moneys contemplated to be loaned first party by second party pursuant to the terms of this agreement:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The parties hereto do hereby, without however in anywise, excepting as herein stated, amending or changing the agreements heretofore entered into, supplement said franchise agreement and said memoranda of agreements as follows:

1. Upon the condition that this agreement shall be approved by the Finance Department of the State of California, Del Mar Turf Club will loan to first party the additional sum of \$40,690.00, payable as needed for the construction work involved in the buildings or improvements hereinabove in this agreement referred to.

2. First party agrees that said additional sum of money totaling \$40,690.00 will be applied by it solely to the payment for materials and labor as sponsor's credits upon the project now being performed by the Works Progress Administration of the United States of America at the Fairgrounds at Del Mar, and being the buildings or improvements hereinabove in this agreement referred to.

3. First party agrees that it will submit to second party prior to the expenditure of any of the sums of money contemplated to be loaned first party a full statement of the purposes for which it is proposed to expend any of said moneys and that second party, prior to the

advancement of moneys to first party under the terms of this agreement, shall have the right to approve or reject any item of expenditure which in the judgment of the second party will or will not contribute to the completion of the buildings or improvements hereinabove referred to.

4. The said additional sum of money hereinabove referred to totaling \$40,690.00 shall be repayable by first party to second party out of moneys payable to first party under the terms of said franchise agreement of December 8, 1936, and as well, out of any moneys which may be appropriated to the use of first party by the legislature of the State of California and available for construction work or improvements.

5. This memorandum of agreement supplements the agreements heretofore entered into between the parties hereto only in the particulars in this memorandum of agreement set forth but does not otherwise alter, change or amend the franchise agreement of December 8, 1936, hereinabove referred to, nor the memorandum of agreement dated January 22, 1937, hereinabove referred to, nor the memorandum of agreement dated February 23, 1937, hereinabove referred to, it being understood between the parties hereto that there are specifically reserved to both of the parties to this agreement all of the rights and privileges (not inconsistent with this agreement) contained in said franchise agreement of December 8, 1936, said memorandum of agreement dated January 22, 1937, and said memorandum of agreement dated February 23, 1937.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by the signatures thereto of their duly authorized officers on the day first hereinabove appearing.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION,

By -----
As its President.

ATTEST:

As its Secretary.

First Party.

DEL MAR TURF CLUB,

By -----
Its President.

ATTEST:

Its Assistant Secretary.

Second Party.

Exhibit 2(d)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into this 11th day of October, 1937, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION, of the State of California (herein sometimes referred to as "first party"), and DEL MAR TURF CLUB, a California corporation (herein sometimes referred to as "second party" and also as "Del Mar Turf Club"),

WITNESSETH:

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein Twenty-Second District Agricultural Association is party of the first part and Del Mar Turf Club is party of the second part; and

WHEREAS, among other things, said franchise agreement of the 8th day of December, 1936, in Paragraph 3 thereof, provided:

"The Party of the first part agrees within ninety (90) days from the execution of this franchise agreement to complete (or furnish evidence that the same can and will be completed within sixty (60) days after said ninety (90) day period) the following buildings to specifications of the Works Progress Administration of the United States of America which have been agreed upon, to wit: A grandstand, club house, receiving barn, nine hundred (900) stalls, each 12 feet x 12 feet, with ample walking area adjacent thereto, a saddling paddock, and a building to include jockeys' quarters, the racing secretary's office, offices for officials at the track, offices for California Horse Racing Board and executives of Del Mar Turf Club. If for any reason said buildings are not completed by the party of the first part within the time hereinabove specified, Del Mar Turf Club reserves the right to complete said buildings at said race track substantially in accordance with said specifications, as in its judgment seems proper, to hold its race meetings thereafter and to reimburse itself for any moneys expended under the provisions of this paragraph out of any moneys payable to party of the first part under the terms of this franchise agreement and out of any moneys which may be appropriated by the California Legislature and legally expendable by Twenty-Second District Agricultural Association for construction work or improvements.

and

WHEREAS, the parties to this agreement on the 22nd day of January, 1937, on the 23rd day of February, 1937, and on the 5th day of April, 1937, respectively, entered into memoranda of agreements supplementing said franchise agreement of the 8th day of December, 1936, in the particulars in said memoranda set forth, in effect providing for the lending by second party to first party of various sums of money totaling as of April 5, 1937, the sum of \$102,390.00, for the purpose of en-

abling first party to complete the improvements required to be completed by the provisions of Paragraph 3 of said franchise agreement of the 8th day of December, 1936; and

WHEREAS, it appears to the parties to this agreement that the sums heretofore loaned to first party or hereafter to be expended by second party in the construction of improvements in accordance with the provisions of the franchise agreement of the 8th day of December, 1936, have and will exceed the estimates furnished to second party by the sum of approximately \$418,000.00, and that it will be necessary, because of said expenditures, to supplement the understanding of the parties hereto with respect to additional moneys contemplated to be loaned to first party by second party, pursuant to the terms of the franchise agreement of December 8, 1936, as supplemented as aforesaid and as supplemented by the provisions of this memorandum of agreement:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

The parties hereto do hereby, without, however, in anywise except as herein stated amending or changing the agreements heretofore entered into, supplement said franchise agreement of December 8, 1936, as follows:

1. Upon the condition that this agreement shall first be approved by the Finance Department of the State of California, Del Mar Turf Club has or will (as a loan to first party) expend sums of money in addition to the sum of \$102,390.00 heretofore agreed to be loaned to first party by second party, not exceeding, however, in the aggregate of such loans the sum of \$520,000.00, payable only as needed for the construction work involved in the buildings or improvements hereinabove in this agreement referred to.

2. First party agrees that said sums of money aggregating not exceeding \$520,000.00 will be applied by it solely to the payment for materials and labor as sponsor's credits and construction work upon the project now being performed by the Works Progress Administration of the United States of America at the Fair Grounds at Del Mar, and being the buildings or improvements hereinabove in this agreement referred to.

3. First party agrees that it will submit to second party, prior to the expenditure of any of the sums of money contemplated to be loaned to first party, a full statement of the purposes for which it is proposed to expend any of said moneys, and that second party, prior to the advancement of moneys to first party under the terms of this agreement, shall have the right to approve or reject any item of expenditure which in the judgement of second party will or will not contribute to the completion of the buildings or improvements hereinabove referred to.

4. The sums of money hereinabove referred to so loaned or to be loaned by second party to first party, totaling in the aggregate a sum not in excess of \$520,000.00 shall be repayable by first party to second party out of moneys payable to first party under the terms of said franchise agreement of December 8, 1936, and as well out of any moneys which may be appropriated to the use of first party by the Legislature of the State of California and available for construction work or improvements.

5. This memorandum of agreement supplements the agreements heretofore executed between the parties hereto only in the particulars in this agreement hereinabove set forth, it being understood between the parties hereto that there are specifically reserved to both of the parties to this agreement all of the rights and privileges (not inconsistent with this agreement) contained in any writings entered into between the parties hereto.

IN WITNESS WHEREOF, the parties of this agreement have executed the same by the signatures thereto of their duly authorized officers on the date hereinabove first appearing.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION

By (s) N. MATZEN
As Its President

ATTEST:

(s) FRANK DUPREE
As its Secretary

(First Party)

DEL MAR TURF CLUB

By (s) HARRY L. CROSBY, JR.
Its President

ATTEST:

(s) ROBERT O. PFLEGER
Its Assistant Secretary.

(Second Party)

This additional page to the foregoing memorandum of agreement, bearing the approval of the Department of Finance, is inserted to evidence a record of the fact that in addition to the improvements contemplated by the terms of the franchise agreement of December 8, 1936, as heretofore and as now supplemented, there have been constructed as a result of advances by Del Mar Turf Club to the District the two large exhibit buildings in front of the grandstand, the plaza with its improvements, the building now styled "Poultry Building" adjacent to the saddling paddock, the motor vehicle parking grounds, and as well numerous other improvements of a general nature, all of the foregoing contributing substantially to the value, improvement and beautification of the fair grounds.

Dated at Sacramento, California,
November 10, 1937.

DEPARTMENT OF FINANCE
APPROVED
Nov. 10, 1937

Exhibit 3

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into this 11th day of July, 1938, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California (hereinafter sometimes referred to as "First Party") and DEL MAR TURF CLUB, a California corporation (hereinafter sometimes referred to as "Second Party" and also as "Del Mar Turf Club"),

WITNESSETH:

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein Twenty-Second District Agricultural Association is party of the first part and Del Mar Turf Club is party of the second part; and

WHEREAS, the parties to this agreement thereafter on the 22nd day of January, 1937, on the 23rd day of February, 1937, on the 5th day of April, 1937, and on the 11th day of October, 1937, entered into memoranda of agreements supplementing said franchise agreement of December 8, 1936, in the particulars in said memoranda set forth, in effect providing for the lending by Second Party to First Party of various sums of money for the purpose of enabling First Party to complete the improvements required to be completed by the provisions of Paragraph 3 of said franchise agreement of December 8, 1936; and

WHEREAS, except in certain details said improvements for all practical purposes have been completed substantially in accordance with the terms of the various agreements entered into between the parties hereto; and

WHEREAS, First Party is now indebted to Second Party in a substantial sum, the exact amount of which, however, not having been agreed upon by the parties to this agreement; and

WHEREAS, it is desired that the amount owing Second Party by First Party, be agreed upon:

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

1. It is agreed between the parties hereto that the amount owing Second Party by First Party, after giving effect to all credits or offsets to which either of the parties hereto may be entitled, as the result of loans made to First Party, is the sum of four hundred ninety-one thousand, six hundred sixty-three and eighty-three hundredths dollars (\$491,663.83), which shall be repaid by First Party to Second Party out of any moneys payable to First Party under the terms of said franchise agreement of December 8, 1936, and as well out of any moneys which may be appropriated to the use of First Party by the legislature of the State of California and available for construction work or improvements.

2. It is contemplated that Second Party may in its discretion henceforward during the life of its franchise, and any renewal or extension thereof, expend upon the facilities used by it in the conduct of its racing enterprise for maintenance, improvements, alterations, renewals or replacements sums of money from time to time. First Party recognizes that Second Party has invested in the plant and improvements at the Del Mar Fair Grounds a sum of money much in excess of any sum contemplated at the time the franchise agreement of December 8, 1936, was entered into, and that it is of vital importance to both of the parties to this agreement that the so-called racing unit be kept in proper condition at all times. First Party desires to express in this agreement its willingness that Second Party's plans for improvements and maintenance of the racing unit shall, at all times during the life of Second Party's franchise, be carried out by Second Party without objection from First Party. It is agreed between the parties hereto that Second Party during the life of its franchise agreement and any renewal or extension thereof may, in its discretion, repair, maintain, replace, alter, renew or improve the facilities used by it in the conduct of its racing enterprise, and as well generally supervise and police the racing unit at all times to the end that such racing unit be at all times maintained in a state of repair and safety. For such purposes Second Party may, as in its discretion it shall deem advisable, expend sums of money over and above the amount now owing Second Party by First Party. Second Party shall not be entitled to recoup expenditures of additional sums as herein permitted from First Party, the right to repayment from First Party for additional expenditures hereafter made being hereby expressly waived.

Second Party agrees that its work of repair, maintenance, policing, et cetera, shall always be conducted on a high plane and shall in nowise interfere with First Party's County Fair operations, nor interfere with the use of the properties for public events, provided such public events will not, in the opinion of Del Mar Turf Club, damage the properties. It is not intended hereby that Second Party shall supervise, police, maintain or repair the County Fair buildings which are used solely by First Party.

3. This memorandum of agreement supplements agreements heretofore entered into between the parties hereto only in the particulars of this agreement set forth, there being specifically reserved to each of the parties to this agreement all of the rights and privileges (not inconsistent with this agreement) contained in any writings entered into between the parties hereto.

4. This agreement shall become inoperative and of no further force or effect at such time as the amount owing Second Party by First Party shall have been fully paid and provision made by Twenty-Second District Agricultural Association for necessary repairs, maintenance, replacements, alterations and policing of the racing unit.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by the signatures thereto of their duly authorized officers.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION

By /s/ MACLEAN WILSON
As Its President.

ATTEST:
/s/ MARY GOODWIN
As Its Secretary.

First Party.

DEL MAR TURF CLUB

By /s/ W. A. QUIGLEY
Its President.

ATTEST:

Its Asst. Secretary.

Second Party.

Exhibit 4
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into this 5th day of February, 1945, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California (hereinafter, for convenience, referred to as "District"), and DEL MAR TURF CLUB, a California corporation (hereinafter, for convenience, referred to as "Turf Club").

W I T N E S S E T H :

WHEREAS, the parties to this agreement on the 8th day of December, 1936, entered into a certain franchise agreement wherein the District is the party of the first part and the Turf Club is the party of the second part, and also have entered into a number of agreements supplemental to said franchise agreement of December 8, 1936, all of which said original agreement and said supplemental agreements are the contract existing between the parties to this agreement; and

WHEREAS, certain matters hereinafter referred to have been discussed between District and Turf Club and it is desired to further supplement the agreement existing between the parties.

NOW, THEREFORE, IT IS AGREED, AS FOLLOWS:

1. The amount owing to Turf Club by District, as of the 30th day of September, 1944, is Two Hundred, Seventy-five Thousand and no/100 (\$275,000.00) Dollars, and the account books of the parties to this agreement shall be by both adjusted to show said obligation in the amount in this paragraph 1 stated.

2. The original franchise agreement dated the 8th day of December, 1936, specifically states the expiration date of said franchise agreement to be the 31st day of December, 1946. It being no fault of Turf Club that because of the War it has been unable to procure racing dates (there having been five (5) consecutive race meetings conducted by Turf Club under the franchise agreement), it is understood and agreed by the parties hereto that the original franchise will be extended for the five (5) remaining consecutive race meetings thereunder commencing with the first succeeding race meeting after date of this agreement.

3. With reference to payment of monies by reason of District's participation in the monies wagered in pari-mutuels each day of racing conducted by Turf Club to the extent of twelve and one-half (12½%) per cent, specific reference is hereby made to paragraph 8, page 8, of the original franchise agreement dated the 8th day of December, 1936, in part as follows:

" . . . and the said party of the second part further agrees to pay as additional consideration for the granting of this franchise a sum, to be known as rental of said premises, equal to twelve and one-half (12½%) per cent of the total monies received by Del Mar Turf Club as its share of monies wagered in pari-mutuels each day

of racing conducted by the party of the second part, said percentage of said total monies wagered to be paid to the party of the first part at the end of each racing day."

It is further understood and agreed by the parties hereto that all monies owing the District by Turf Club will be paid to the District in cash or by check as set forth above namely: "to be paid to the party of the first part at the end of each racing day." It is further understood and agreed that as long as the District is still indebted to the Turf Club, immediately at the close of each racing season and upon receipt by the District from Turf Club of monies due District as set forth above, District will pay to Turf Club in cash or by check a sum equal to eighty (80%) per cent of the amount received by District from Turf Club as its participation in the monies wagered in pari-mutuels each day conducted by Turf Club, said payment to apply on said indebtedness to reduce the amount owing until said indebtedness is paid in full.

4. Some misunderstanding has existed between the District and the Turf Club respecting expenditures made by Turf Club for alterations and additions to existing buildings on the Del Mar Fair Grounds. Hereafter, no expenditures which Turf Club expects to recoup from the District shall be made without the prior approval, in writing, of the District and the Department of Finance of the State of California. It is understood and agreed that a further consideration for the granting of the renewal and extension of said franchise agreement the Turf Club hereby promises and agrees to expend at its own cost and expense wholly the sum of not less than Fifty Thousand and no/100 (\$50,000.00) Dollars, in permanent improvements of the premises of the said District, such sum to be expended within a period of fifteen (15) years, commencing with the first succeeding race meeting after date of this agreement. It is understood and agreed that this amount is solely a consideration and is not to be charged to the said District nor against it in any manner whatsoever. It is further agreed that the Turf Club shall make no permanent improvements to the premises, additions to existing buildings or erect any structures on the Del Mar Fair Grounds, even at its own expense, without the prior written approval of the District and the Department of Finance of the State of California.

5. Turf Club is hereby granted a franchise for an additional term of ten (10) years; such additional term of ten (10) years to commence after the expiration of the original term of its franchise, as authorized by said original franchise agreement of December 8, 1936, as extended by paragraph 2 above. As consideration for the purchase of said additional term of ten (10) years, the Turf Club will pay to the District the sum of One hundred thousand and no/100 (\$100,000.00) Dollars,—Twenty-five thousand and no/100 (\$25,000.00) Dollars thereof payable out of the proceeds of the racing meeting next succeeding after the date of this agreement; Thirty-five thousand and no/100 (\$35,000.00) Dollars thereof payable out of the proceeds of the second racing meeting next succeeding after the date of this agreement; and Forty thousand and no/100 (\$40,000.00) Dollars thereof payable out of the third racing meeting next succeeding after the date of this agreement.

6. Except as specifically modified by the terms of this agreement, all agreements of the parties shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by the signatures thereto of their duly authorized officers.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION OF THE STATE OF CALIFORNIA

By /s/ HENRY W. CHURCHMAN
Its President,

First Party.

ATTEST:

/s/ HAZEL E. FRASSE
Its Secretary-Manager

DEL MAR TURF CLUB, a California
Corporation

By /s/ W. F. TUNNEY
Its Vice-President and General Manager.

ATTEST:

/s/ KENT ALLEN
Its Secretary

Department of Finance

APPROVED

February 26, 1945

James Dean, Director

Exhibit 5
MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this 1st day of June, 1943, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, hereinafter Designated as party of the first part (sometimes hereinafter referred to as "District") and DEL MAR TURF CLUB, a California corporation, hereinafter designated as party of the second part (sometimes hereinafter referred to as "Turf Club")

WITNESSETH:

WHEREAS, the party of the first part owns certain properties and buildings in Del Mar, County of San Diego, State of California, known as the "Fairgrounds", and

WHEREAS, the District and the Turf Club, on December 8, 1936, entered into a certain Franchise Agreement wherein the District is the party of the first part, and the Turf Club is the party of the second part, and thereafter entered into memoranda of agreements supplemental to said Franchise Agreement of December 8, 1936, in the particulars in said memoranda set forth, such supplemental agreements dated respectively, January 22, 1937, February 23, 1937, April 5, 1937, October 11, 1937, and July 11, 1938, each and all of said supplemental agreements, as well as the Franchise Agreement of December 8, 1936, having been approved by the Finance Department of the State of California, as required by law, in order that the contracts be binding upon the District; and

WHEREAS, it was contemplated by the terms of all of the contracts entered into between the District and the Turf Club that the principal activity upon the Fairgrounds at Del Mar, California, entered into by the Turf Club would be the annual racing meeting held thereat under the jurisdiction of the California Horse Racing Board; and

WHEREAS, due to the present state of war and for other reasons, among them the geographical situation of the properties at Del Mar, California, it appears improbable that a racing meeting will be conducted at Del Mar, California, for at least a considerable period; and

WHEREAS, the party of the second part in this agreement desires to obtain the use of said properties and buildings from the party of the first part for the purpose of manufacturing certain aircraft parts and other devices to aid the war effort of the United States of America; and

WHEREAS, the party of the second part is able to procure certain valuable contracts to supply parts to the various aircraft plants and has made plans for a staff of experts, as well as capital with which to finance such an enterprise, it is desired by the parties hereto that this agreement be entered into for certain considerations hereinafter stipulated so as to enable the Turf Club to proceed with its plans as aforesaid.

Now, THEREFORE, in consideration of the covenants to be mutually agreed upon by each of the parties to this agreement, it is hereby agreed as follows:

1. The Franchise Agreement dated December 8, 1936, and subsequent supplements thereto between the District and the Turf Club does have priority over and above any and all agreements entered into by the District for the use of the properties and buildings insofar as its terms and privileges are provided therein, during the life of said Franchise Agreement.

2. The Turf Club, through no fault of its own, by reason of the present war emergency is unable to operate under the terms of the Franchise Agreement, not having received permission from the California Horse Racing Board of the State of California and military authorities.

3. It is known to the Turf Club that there is an agreement in effect between the District and the Tufford Motor Co. for the storage of automobiles, which are under Government supervision, upon certain properties and within certain buildings on the Fairgrounds.

4. The District hereby agrees and does hereby grant to the Turf Club the privilege of using the properties and buildings on the Fairgrounds of the District at Del Mar, California, for certain consideration hereinafter stipulated, subject to the provisions contained in the existing Franchise Agreement as referred to in paragraph 1 of this agreement, and the provisions contained in an existing agreement between the District and the Tufford Motor Co. and subject to certain rights and privileges of the Board of Directors of the District, and/or its representative, or representatives, and certain reservations hereinafter set forth.

5. This agreement to remain in full force and effect for the duration of the present war or until the military authorities and the California Horse Racing Board of the State of California do grant the Turf Club permission and a renewal of license to resume Horse Racing under said Franchise Agreement.

6. The Turf Club is hereby granted the privilege of using, so long as required in its contracts with aircraft companies or other companies engaged in business for military purposes, all properties and buildings on the Fairgrounds at Del Mar, California, with the following exceptions, to wit:

- (a) The Administration Building of the District and property immediately adjacent thereto,
- (b) The building housing the California State Forestry, and property immediately adjacent thereto,
- (c) The buildings reserved by the District for use by the Tufford Motor Co., said buildings more commonly known as the Livestock building, Poultry and Rabbit building, Industrial building, and Agricultural building; it is understood and agreed by the parties hereto that said buildings will be made available for use by the Turf Club under the terms and privileges of this agreement as and when said buildings are vacated by the Tufford Motor Co. in accordance with the existing agreement.

7. The District does hereby reserve the right for its Board of Directors, and/or its representative, or representatives, with proper identification and for proper reasons, to have access to the properties and buildings and agrees that said right will only be exercised when it is fitting and proper and shall in no wise interfere with the rights and privileges of the Turf Club contained in this agreement.

8. The Turf Club agrees to pay all costs of operating, maintaining, and policing said properties and buildings under this agreement, including the payment of all water, gas, electricity, janitor service, et cetera, during the life of this agreement.

9. The Turf Club agrees to restore the properties and buildings to their original condition after their use for war purposes has been terminated so that said properties and buildings will again be in condition for the purpose for which they were originally intended.

10. The party of the second part agrees to pay to the party of the first part as rental for the granting of the privileges herein contained whichever is the greater of (a) One Thousand Dollars (\$1,000.00) a month or (b) ten per cent (10%) of the profit to Turf Club from the conduct of its manufacturing enterprise, such percentage to be computed on profit after the deduction of all expenses incidental thereto before the deduction of rental provided for in this agreement and before the deduction of federal taxes on income. The amount by which the rental payable to first party exceeds Five Hundred Dollars (\$500.00) monthly shall be retained by Turf Club and credited upon the District's obligation to Turf Club. Rental payable shall commence August 1, 1943, and first party shall be supplied with reasonable promptness after the close of second party's fiscal year with a copy of an audit report prepared by second party's auditors.

11. Payment of utilities, referred to in paragraph 8 of this agreement, to be assumed by the Turf Club as of the 1st day of June, 1943.

12. It is understood and agreed between the parties hereto that so long as the agreement between the District and the Tufford Motor Co. remains in full force and effect, representatives of the Tufford Motor Co., employees, governmental inspectors, bank inspectors, finance inspectors, and those authorized to make reports on the automobiles stored on the premises shall be given permission to conduct their business but shall in no wise infringe upon the rights and privileges of the Turf Club under this agreement.

13. It is not contemplated by the parties to this agreement that the provisions thereof shall be continued more than a reasonable period after the present war emergency is ended. On the contrary it is fully understood between the District and the Turf Club that the engagement entered into by the terms of this agreement is of a temporary nature and that the use of the premises for the purposes contemplated hereby is intended to continue only so long as the California Horse Racing Board and the military authorities will not sanction racing meetings at Del Mar, California. It is further provided that, notwithstanding such use of the premises, should the District be able to hold a county fair at any time during the continuance of this agreement, that the Turf Club shall so conduct its enterprise as not to interfere in any way with the holding of a county fair.

14. The parties to this agreement are aware of the fact that contracts and sub-contracts for any of the devices which may be manufactured by Turf Club may be subject to re-negotiation under the Acts of Congress of the United States of America. Therefore, if any contract or sub-contract made by Turf Club for the manufacture of aircraft parts or any other devices is required by the United States Government, or any of its Boards or Agencies, to be re-negotiated and reduced in gross amount to the extent that the "profit after the deduction of all expenses incidental thereto, before the deduction of rental provided in this agreement, and before the deduction of federal taxes on income," as said phrase is used in paragraph 10 of this agreement, is reduced, the rental payable or to be credited to the District shall be reduced proportionately but shall not be reduced below the minimum set forth in said paragraph 10 of this agreement.

15. At any time during the continuance of this agreement Turf Club shall have the right to cancel same upon thirty (30) days' notice in writing to the District, addressed to its president or secretary, at Del Mar, California. Such cancellation shall not relieve Turf Club of any obligations to the District under the terms of this agreement accrued prior to the effective date of such cancellation.

16. This agreement is subject to the approval of the Department of Finance of the State of California, as required by law.

17. The Department of Finance of the State of California shall have the right to make audits of the accounts of either or both of the parties to this agreement. Each party to this agreement hereby consents to delivery to the other party of a copy of any audit made by any state department or agency or by any accountant.

IN WITNESS WHEREOF, the parties to this agreement have executed the same by the signature thereto of their duly authorized officers.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION of the State of California

By /s/ HARRY W. CHURCHMAN
Its President

ATTEST :
Its Secretary-Manager
Party of the First Part.

DEL MAR TURF CLUB, a California Corporation

By /s/ HARRY L. CROSBY, JR.

ATTEST :
/s/ KENT ALLEN
Its Secretary
Party of the Second Part

FORM APPROVED :

6/29/43

/s/ Deputy Attorney Gen.

DEPARTMENT OF FINANCE

APPROVED

JUNE 29, 1943

John F. Hassler, Director

On motion of Director Mannen, seconded by Director Edic, and unanimously carried, the following resolution was adopted:

Resolved, that the Twenty-Second District Agricultural Association of the State of California enter into an Agreement with the Del Mar Turf Club for the leasing of its properties and buildings for certain considerations as specifically set forth in said agreement, dated June 1, 1943, which agreement is hereby approved by the Board of Directors of the Twenty-Second District Agricultural Association of the State of California this 17th day of June, 1943, subject to the approval of the Department of Finance of the State of California and subject to the priority of the existing Franchise Agreement dated December 8, 1936.

Be it Further Resolved, that the President and Secretary-Manager be, and they are hereby authorized and directed to execute on behalf of the Association, such Agreement as adopted at the Special Meeting of the Board of Directors of this Association on the 17th day of June, 1943.

I, the undersigned, HAZEL R. FRASSÉ, hereby certify that I am the Secretary-Manager of the Twenty-Second District Agricultural Association of the State of California, and, as such, the official custodian of the records thereof.

I, further certify that the above and foregoing is a full, true, and correct copy of resolutions adopted by the Board of Directors of said Association at its meeting held June 17, 1943, whereat a majority of the Board of Directors was present and acting; and that said resolutions are in full force and effect.

Dated at Del Mar, California, June 24, 1943.

/s/ HAZEL E. FRASSÉ
Secretary-Manager

Exhibit 6(a)
AGREEMENT

THIS AGREEMENT entered into this 1st day of February, 1950, between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION, of the State of California, hereinafter referred to as the "District," and DEL MAR TURF CLUB, a corporation, hereinafter referred to as "Turf Club,"

W I T N E S S E T H :

WHEREAS, the parties have heretofore entered into a certain Franchise Agreement on the 8th day of December, 1936, which, together with numerous amendments thereto, is hereinafter referred to as the "Franchise Agreement"; and

WHEREAS, it is the desire of the District and of the Turf Club that certain stock barns and stable accommodation buildings be constructed on the properties owned by the District and leased under said Franchise Agreement by the Turf Club; and

WHEREAS, it is the desire of the Turf Club to finance the payment of said improvements.

NOW, THEREFORE, IT IS AGREED, as follows:

1. That the Turf Club will enter into contracts for the construction of the said stock barns and stable accommodations, in accordance with such plans and specifications as are mutually agreed upon by the parties, and as approved by the Department of Finance of the State of California. The total cost of said construction in no event shall exceed \$95,000.00.

2. That the parties hereto shall use their best efforts to have the said buildings constructed and available for occupancy by the District for its 1950 Fair and by the Turf Club for its 1950 racing season.

3. The District hereby agrees to repay the Turf Club in full for the total cost of the construction of the said stock barns and stable accommodations and agrees that payment therefor may be made in the following manner: That commencing with the first day of the 1951 racing season and successive seasons, until the items are fully paid for, the Turf Club may withhold out of the daily rental to be paid the District by the Turf Club, by virtue of the said Franchise Agreement, twenty-five per cent (25%) of said daily rental, until a total of \$47,500.00 has been withheld out of the 1951 racing season rentals, and then during the following racing season, commencing with the first day thereof, 25% of the said daily rental shall be withheld, until the total of the cost of said items has been paid for.

4. At the conclusion of the construction of said stock barns and stable accommodations, the Turf Club shall present to the District invoices showing the total amount expended for the said construction.

5. This agreement may be terminated or amended by mutual consent, in writing, of the parties hereto.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION

By /s/ PAUL T. MANNEN

ATTEST:

/s/ SHIRLEY ALSPAUGH
Secretary

DEL MAR TURF CLUB

By /s/ DONALD B. SMITH
President

ATTEST:

/s/ HERBERT KUNZEL
Secretary

APPROVED BY:

DIVISION OF FAIRS, STATE OF CALIFORNIA

By /s/ A. E. SNIDER

APPROVED BY:

DEPARTMENT OF FINANCE, STATE OF CALIFORNIA

May 22, 1950

JAMES S. DEAN, Director

By (Signature illegible)

Administrative Adviser

Exhibit 6(b)
AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of May, 1950, between 22ND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, hereinafter referred to as the "District", and DEL MAR TURF CLUB, a corporation, hereinafter referred to as "Turf Club",

WITNESSETH:

WHEREAS, the District and the Turf Club are Lessor and Lessee, respectively, under a certain franchise and lease agreement dated December 8, 1936, covering the rental of certain property owned by the District and commonly known as San Diego Fairgrounds, and appurtenant facilities located at Del Mar, San Diego County, California; and

WHEREAS, the Turf Club has installed certain tenant's improvements which it owns on the leased premises and maintains certain of its property on the premises; and

WHEREAS, Turf Club carried certain policies of insurance covering the said tenant's improvements and other property on the said premises against loss or damage by fire and by certain other perils, as specified in said policies; and

WHEREAS, the aforesaid policies of insurance carried by Turf Club, the insured under said policies, contain a clause reading substantially as follows:

SUBROGATION CLAUSE—Without prejudice to this insurance the Insured may release, prior to loss, any corporation, firm, individual or other entity from liability for loss caused by act or neglect of such corporation, firm, individual or other entity or any employee(s), agent(s), or representative(s) thereof. All rights of subrogation is hereby waived under this policy against any corporation, firm, individual or other entity parent or subsidiary to, owned or controlled by or affiliated with the Insured;

and

WHEREAS, Turf Club desired to release District from such liability as will not prejudice the insurance afforded by aforesaid policies of insurance carried by Turf Club.

Now, THEREFORE, in consideration of the premises and of the payment by District to Turf Club of the sum of One Dollar (\$1.00), (receipt of which is hereby acknowledged by Turf Club), and of other good and valuable consideration, the parties hereto do hereby agree as follows:

Turf Club hereby releases District from any and all liability for loss or damage to property owned by Turf Club and located on the premises leased from District under the aforesaid franchise and lease agreement, provided:

(1) Such loss or damage is caused by the act or neglect of District or any of its agents, servants or employees, and

(2) Such loss or damage occurs after the date this agreement is made and entered into, and

(3) Such loss or damage is covered by the aforesaid policies of insurance.

It is further provided that this release shall be valid and binding only to the extent that such loss or damage is covered by the aforesaid policies of insurance and shall be null and void with respect to any loss or damage not so covered and shall be null and void with respect to any amount by which any loss or damage actually sustained by Turf Club exceeds the amount recovered by Turf Club under the aforesaid policies of insurance.

Should the aforesaid franchise and lease agreement between the parties herto be terminated or canceled in any manner, or should the aforesaid policies of insurance carried by Turf Club be terminated or canceled in any manner and for any reason and not be renewed or replaced, this entire agreement shall forthwith become null and void without notice, otherwise it shall remain in full force and effect.

This agreement may be canceled at any time by Turf Club by giving written notice to District stating when thereafter such cancellation shall be effective. Written notice mailed to District at its last known address shall be sufficient proof of notice. Delivery of such notice shall be equivalent to mailing.

If this agreement is canceled, as hereinabove provided, it shall be null and void with respect to any loss or damage sustained or occurring after the effective date and time of such cancellation.

Notwithstanding anything herein contained to the contrary, this agreement may be terminated and the provisions of this agreement may be altered, changed or amended, by mutual consent of the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed by and on behalf of the parties hereto, the day and year first above written.

22ND DISTRICT AGRICULTURAL
ASSOCIATION

By /s/ PAUL T. MANNEN
Title Manager

DEL MAR TURF CLUB, a corporation

By /s/ HERBERT KUNZEL
Title Secretary

APPROVED:
DEPT. OF FINANCE
June 14, 1950

Exhibit 6(c)
AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of May, 1950, between 22ND DISTRICT AGRICULTURAL ASSOCIATION of the State of California, hereinafter referred to as the "District", and DEL MAR TURF CLUB, a corporation, hereinafter referred to as "Turf Club",

WITNESSETH:

WHEREAS, the District and the Turf Club are Lessor and Lessee, respectively, under a certain franchise and lease agreement dated December 8, 1936, covering the rental of certain property owned by the District and commonly known as the San Diego Fair Grounds and appurtenant facilities located at Del Mar, San Diego County, California; and

WHEREAS, District carries certain policies of insurance covering the said property as described in the said agreement against loss by fire and by certain other perils as specified in said policies; and

WHEREAS, the aforesaid policies of insurance carried by the District, the insured under said policies, contain a clause reading substantially as follows:

SUBROGATION CLAUSE—Without prejudice to this insurance the Insured may release, prior to loss, any corporation, firm, individual or other entity from liability for loss caused by act or neglect of such corporation, firm, individual or other entity or any employee (s), agent (s), or representative (s) thereof. All right of subrogation is hereby waived under this policy against any corporation, firm, individual or other entity to which or to whom coverage is afforded under this policy or against any corporation, firm, individual or other entity parent or subsidiary to, owned or controlled by or affiliated with the Insured;

and

WHEREAS, District desires to release Turf Club from such liability as will not prejudice the insurance afforded by the aforesaid policies of insurance carried by District.

Now, THEREFORE, in consideration of the premises and of the payment by Turf Club to District of the sum of One Dollar (\$1.00), (receipt of which is hereby acknowledged by District), and of other good and valuable consideration, the parties hereto do hereby agree as follows:

District hereby releases Turf Club from any and all liability for loss or damage to property owned by District and leased to Turf Club under the aforesaid franchise and lease agreement, provided:

(1) Such loss or damage is caused by the act or neglect of Turf Club, or any of its agents, servants or employees, and

(2) Such loss or damage occurs after the date this agreement is made and entered into, and

(3) Such loss or damage is covered by the aforesaid policies of insurance.

It is further provided that this release shall be valid and binding only to the extent that such loss or damage is covered by the aforesaid policies of insurance and shall be null and void with respect to any loss or damage not so covered and shall be null and void with respect to any amount by which any loss or damage actually sustained by District exceeds the amount recovered by District under the aforesaid policies of insurance.

Should the aforesaid franchise and lease agreement between the parties hereto be terminated or canceled in any manner, or should the aforesaid policies of insurance carried by District be terminated or canceled in any manner and for any reason and not be renewed or replaced, this entire agreement shall forthwith become null and void without notice, otherwise it shall remain in full force and effect.

This agreement may be canceled at any time by District by giving written notice to Turf Club stating when thereafter such cancellation shall be effective. Written notice mailed to Turf Club at its last known address shall be sufficient proof of notice. Delivery of such notice shall be equivalent to mailing.

If this agreement is canceled, as hereinabove provided, it shall be null and void with respect to any loss or damage sustained or occurring after the effective date and time of such cancellation.

Notwithstanding anything herein contained to the contrary, this agreement may be terminated and the provisions of this agreement may be altered, changed or amended, by mutual consent of the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed by and on behalf of the parties hereto, the day and year first above written.

22ND DISTRICT AGRICULTURAL ASSOCIATION

By /s/ PAUL T. MANNEN
Title Manager

DEL MAR TURF CLUB, a corporation

By /s/ HERBERT KUNZEL
Title Secretary

APPROVED:

June 14, 1950

DEPARTMENT OF FINANCE

State of California

By JAMES S. DEAN, Dir.

Signed by Louis J. Heinzer
Admin. Asst.

Exhibit 6(d)
AGREEMENT

THIS AGREEMENT entered into this 1st day of April, 1953 between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION, of the State of California, hereinafter referred to as the "District", and DEL MAR TURF CLUB, a corporation, hereinafter referred to as "Turf Club",

WITNESSETH:

WHEREAS, it is the desire of the District and of the Turf Club that the present Grandstand roof be reenforced to comply with building code requirements and extended west and have glass windbreak built; and

WHEREAS, it is the desire of the Turf Club to finance the payment of said improvements.

NOW, THEREFORE, IT IS AGREED, as follows:

1. That the Turf Club will enter into contracts for the reenforcing of present Grandstand roof and extension in accordance with such plans specifications as are mutually agreed upon by the parties, and as approved by the Department of Finance of the State of California. The total cost of said construction in no event shall exceed \$65,000.00.

2. That the parties hereto shall use their best efforts to have the said buildings repaired and available for occupancy by the District for its 1953 Fair and by the Turf Club for its 1953 racing season.

3. The District hereby agrees to repay the Turf Club in full for the total cost of the construction of the said reenforcing of present Grandstand roof and extension and glass windbreak, not to exceed \$65,000.00, and agrees that payment therefor may be made in the following manner: That commencing with the first day of the 1953 racing season, until the items are fully paid for, the Turf Club may withhold out of the daily rental to be paid the District by the Turf Club, by virtue of the said Franchise Agreement, fifty per cent (50%) of said daily rental, until the total of the cost of said items has been paid for; total not to exceed \$65,000.00. It is also mutually agreed that no overhead costs by the Del Mar Turf Club shall be added to the contract price.

4. At the conclusion of the reenforcing and extension of the Grandstand roof, the Turf Club shall present to the District invoices showing the total amount expended for the said construction.

5. This agreement may be terminated or amended by mutual consent, in writing, of the parties hereto.

TWENTY-SECOND DISTRICT AGRICULTURAL
ASSOCIATION

By (s) CHAFFEE C. YOUNG
President

(s) PAUL T. MANNEN
Secretary-Manager

DEL MAR TURF CLUB

By (s) ALFRED HART
President

(s) CURTIS H. PALMER
Secretary

APPROVED:

June 17, 1953

DEPT. OF FINANCE

JAMES S. DEAN, DIR.

BY LOUIS J. HEINZER

Admin. Advisor

Exhibit 7
FRANCHISE AGREEMENT EXTENSION

THIS AGREEMENT made this 17th day of August, 1953, by and between TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION, hereinafter known as "District" and the DEL MAR TURF CLUB, a California corporation, hereinafter known as "Turf Club".

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into a Franchise Agreement dated the 8th day of December, 1936, for the rental of certain horse racing facilities in the County of San Diego in the vicinity of Del Mar, California, for a term of ten (10) years commencing January 1, 1937, which term has, by extension to said agreement, been extended to December 31, 1959; and

WHEREAS, it is the desire of the said parties to enter into an extension of said agreement and its amendments, supplements and extension;

Now, THEREFORE, in consideration of the premises and the mutual covenants, conditions and agreements of the parties, hereinafter set out, the parties agree as follows:

1. That the term of said "Franchise Agreement" shall be extended to and inclusive of the 31st day of December, 1969.

2. That the premises covered by the said Franchise Agreement shall consist of the racing and appurtenant facilities as outlined in the plat marked "Exhibit One", attached hereto and made a part of this agreement; together with any racing and appurtenant facilities hereafter constructed within the boundaries of the said San Diego County Fairgrounds; that these facilities shall hereinafter be referred to as the "Premises"; that the area set out in solid color upon said plat "Exhibit One" shall be available for use by Turf Club on a permanent year-round basis for the purpose of office use and storage space which Turf Club agrees to maintain and keep in as good repair as they were at the date of the execution of this instrument, normal wear and tear, deterioration (except as to paint) by the elements excepted; that the Turf Club commencing on January 1, 1954, will maintain that portion of the premises as outlined in yellow on "Exhibit One" on a year-round basis, and for this shall be paid by the District the sum of \$35,000.00 annually commencing as of January 1, 1954, to be paid in two installments, in arrears, one-half on July 1 of each year and the remaining one-half on January 1 of each year. The first of such payments to be paid on July 1, 1954. In accomplishing such maintenance, Turf Club shall not be called upon to repair or replace deteriorated or worn out items or equipment except such that may result from its own negligence nor shall Turf Club be called upon to effect any post county Fair clean up, the same being the responsibility of District; that the Turf Club shall charge District or any Lessee of District actual maintenance costs occasioned by the use of said premises at any time other than Districts operation of County Fair. Such actual costs shall be

limited to the costs of labor and materials directly attributable to such maintenance and shall not include administrative overhead. Should the California Horse Racing Board not allot dates for racing to be conducted on said premises in any year then District may suspend the provisions of this Agreement calling for Turf Club's maintenance of said premises, by giving Turf Club written notice of such intention to suspend at least 30 days prior to such suspension. The said suspension shall cease upon the allocation by California Horse Racing Board of any racing dates to Turf Club. Payment to Turf Club by District for its maintenance as required by paragraph 2 hereof shall be prorated to cover the period of any suspension of its maintenance requirements under said paragraph 2.

3. That Turf Club shall pay all costs of operating said premises during the period of its occupancy, including utility charges, and shall, at the conclusion of each such period of occupancy, return said premises to District in as good condition as they were received by it from District at the commencement of said term, reasonable wear and tear excepted.

4. That Turf Club shall conduct no activities on said premises during its occupancy, which shall be in violation of any laws of the State, Federal or local governments and shall conduct its activities on a plane consistent with the standard established by similar racing associations in California and in accordance with the rules and regulations of the California Horse Racing Board.

5. That Turf Club shall conduct, on the said premises, horse racing meets as licensed by the California Horse Racing Board.

6. That Turf Club shall, prior to the first day of March, of each year, notify the district, in writing, of the racing dates allotted to it by the California Horse Racing Board for that year. If such dates have not been allotted prior to said first day of March or shall be changed after such date, then Turf Club shall promptly give notice, in writing, to District of the allotment of dates or of such changes; that District shall give Turf Club exclusive possession of the premises covered by this Agreement, at least fifteen days prior to the first day of any Turf Club racing meet in accordance with said notice, and such occupancy shall continue for a period not to exceed fifteen days after the last day of any racing meet. The dates allotted by the California Horse Racing Board for harness and quarterhorse racing, and the fifteen day period prior to and subsequent to said dates for such harness and quarterhorse racing shall not conflict with the dates of the annual Fair by the District.

7. That Turf Club shall have the exclusive right to conduct horse racing meets and all activities generally or commonly connected therewith on said premises, including harness and quarterhorse meets (except that District, during its annual Fair, may conduct racing as part of its Fair program); that Turf Club agrees to pay as rental for said premises a sum equal to nineteen and one-half per cent ($19\frac{1}{2}\%$) of the total moneys received by the Turf Club as its share of the moneys wagered in the parimutuels each day of racing conducted by Turf Club (said rental to be paid to District at the end of each racing day) during the year 1953, fifteen and one-half per cent ($15\frac{1}{2}\%$) thereof during the year 1954 and twelve and one-half per cent ($12\frac{1}{2}\%$) thereof during each year of the term of the said Franchise Agreement thereafter.

8. That Turf Club agrees to use reasonable diligence to obtain licenses for racing dates in each year of the term of this agreement but in the event no license is obtained or for any reason no racing is conducted in any one year, through no fault or neglect of Turf Club, then the term of this agreement shall be extended to include one whole additional year for each year in which no racing is conducted by Turf Club.

9. That as a consideration for the extension of said franchise agreement, District agrees to accomplish the following improvements upon said leased premises to the extent that the aggregate cost thereof does not exceed \$1,000,000.00.

- (1) Extension of the present grandstand.
- (2) Straightening and extending the present clubhouse and Turf Club.
- (3) Expansion and repair of stable facilities.
- (4) Grading and paving of all parking lot area.
- (5) Landscaping of the infield area.

Turf Club will advance District Funds, against rentals, with which to accomplish said construction as required by District for such construction. Turf Club will assume the cost of said construction to the extent of one-half, but no more than \$200,000 of the cost thereof, which exceeds \$600,000. District shall reimburse Turf Club for District's share of the cost of said improvements by Turf Club withholding from rentals required to be paid under this Agreement 40% thereof from the rental due in 1953, 35% of the rental due in 1954, and 25% of the rentals due in the succeeding years until Turf Club shall be fully reimbursed for all funds required to be advanced for District's share of the cost of the improvements.

Construction of said enumerated improvements (1) and (2) shall be accomplished within 18 months from the date of this agreement and the balance of said improvements shall be accomplished within 42 months from the date hereof. Turf Club further agrees that it will furnish the architectural design for said improvements enumerated (1) and (2).

Construction of said enumerated improvements shall not be commenced until plans, specifications and contracts, which shall not call for any expansion of any catering facilities or equipment thereof, shall be agreed upon by a joint building committee of six members. Three to be appointed by District and three appointed by Turf Club.

10. That District shall have reasonable rights of inspection of the leased premises at any time during the Turf Club's occupancy of the premises.

11. That Turf Club shall hold District harmless from any and all claims and liabilities for injury to person or property resulting from Turf Club's occupancy of the said leased premises and Turf Club shall carry liability and property damage insurance in principal amounts of not less than One Hundred Thousand Dollars (\$100,000.00) and Three Hundred Thousand Dollars (\$300,000.00) for personal injury and Fifty Thousand Dollars (\$50,000.00) for property damage. In addition Turf Club agrees to carry Workmen's Compensation Insurance adequate to cover its risks in that regard.

12. Should any of the provisions of this Franchise Agreement Extension be in conflict with provisions of said Franchise Agreement dated the 8th day of December, 1936, or its amendments, supplements or extension, then such provisions hereof shall obtain and apply and be in lieu thereof to the extent to which they may conflict.

13. That any notice required to be given under this agreement shall be given by registered United States Post Office mail addressed to District at Del Mar, California, and to Turf Club, at Del Mar, Calif.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION

By /s/ DONALD A. BRIGGS
Vice President

and

/s/ PAUL T. MANNEN
Its Secretary

DEL MAR TURF CLUB

By /s/ ALFRED HART
Its President

and

/s/ CURTIS H. PALMER
Its Secretary

Exhibit 8
SUB-FRANCHISE AGREEMENT

THIS AGREEMENT made this 26th day of July, 1954, by and between DEL MAR TURF CLUB, a California corporation, hereinafter known as TURF CLUB, and OPERATING COMPANY, a California corporation :

WITNESSETH :

WHEREAS, Turf Club has heretofore entered into a certain Franchise Agreement dated the 8th day of December, 1936, with the Twenty-second District Agricultural Association, hereinafter known as "District", for the rental of certain horse racing facilities in the County of San Diego, in the vicinity of Del Mar, California, for a term of ten (10) years commencing January 1, 1937, which term has, by extensions to said Agreement, been extended to December 31, 1969. The last of said extensions to said Franchise Agreement was made under instrument dated the 17th day of August, 1953, by and between the District and the Turf Club, and hereinafter referred to as the "Franchise Agreement Extension", and reference is hereby made to the aforesaid Franchise Agreement dated December 8, 1936, and the Franchise Agreement Extension and to all agreements and contracts now in force between Turf Club and District for all purposes hereof; and

WHEREAS, it is the desire of the Operating Company to obtain, and the Turf Club to sub-lease to the Operating Company, all of the horse racing facilities held by the Turf Club under its Franchise Agreement Extension with the District dated August 17, 1953, upon the terms and conditions and for the consideration herein set forth.

Now, THEREFORE, in consideration of the premises, of the rentals herein provided and the mutual covenants, conditions and agreements of the parties hereinafter set out, the parties hereby covenant and agree as follows :

1. Upon and subject to the terms and provisions hereof, Turf Club does hereby sub-lease and sub-let unto Operating Company those certain premises covered by said Franchise Agreement Extension, for a period to and inclusive of the thirtieth (30th) day of December, 1969, unless sooner terminated under and in accordance with the provisions hereof.

2. A. The premises covered by this Sub-Franchise Agreement consist of the racing and appurtenant facilities existing within the area as outlined in the plat, marked as "Exhibit One", attached hereto and made a part of this Agreement; together with any racing and appurtenant facilities hereafter constructed within the boundaries of the said area as outlined in said plat marked "Exhibit One"; all of such facilities hereby sub-leased being hereinafter referred to as the "Premises".

B. It is understood that the Premises, or a portion thereof, are presently the subject of a certain letter agreement between Turf Club and Western Harness Racing Association dated December 1, 1953, as amended and supplemented by letter agreement between said parties,

also dated December 1, 1953, wherein Western Harness Racing Association was granted the option to use and occupy a portion of the Premises on the terms and for the periods set forth in such letters and, Operating Company having been furnished true and correct copies thereof, reference is hereby made to such letters for all purposes hereof. Turf Club does hereby assign to Operating Company all valid and subsisting rights of Turf Club under such letters and Operating Company does hereby assume and agree to be and remain bound by all valid and subsisting obligations and undertakings of Turf Club thereunder.

3. This Agreement is not intended to cover any chattels, furniture, automotive equipment and other personal property, similar or dissimilar, owned by the Turf Club.

4. A. Operating Company does hereby agree to pay direct to District or other party entitled thereto, as and when due, the rentals and all other payments, taxes, assessments, levies and charges of all and every kind as specifically and generally set out and described in or covered by the Franchise Agreement Extension and required to be paid by Turf Club in said Agreement, or otherwise, and does hereby agree to fully and punctually perform and comply with all of the obligations required to be performed or complied with by the Turf Club in said Franchise Agreement Extension, and in addition thereto, does hereby agree to pay to the Turf Club, as additional rental, in each year during the term hereof ninety percent (90%) of the Net Profits of Operating Company, or the sum of Two Hundred Fifty Thousand Dollars (\$250,000), whichever is the greater, the first such rental to be due and payable on the 30th day of November, 1954, and such rental being payable annually thereafter on the thirtieth (30th) day of November in each calendar year during the term hereof.

B. "Net Profits", hereinabove referred to, are to be determined by deducting Operating Expenses from the gross income, regardless of source, of Operating Company. "Operating Expenses" as used herein shall mean and be deemed to include all reasonable amounts expended or incurred by Operating Company for its own account in accordance with good business practice in the carrying out of the provisions of this Agreement, including, but not limited to all reasonable amounts expended or incurred in connection with the following:

(a) All salaries and wages, purses and breeders' fees, subject to the limitations of this Agreement;

(b) Rentals for the Premises paid or accrued to the Twenty-second District Agricultural Association under the Franchise Agreement Extension;

(c) Racing equipment other than that subject to depreciation charges, and equipment rentals;

(d) Interest on monies borrowed from whatever sources permitted hereunder;

(e) Advertising and public relations;

(f) Monies currently withheld from rentals due District, it being understood and agreed that the unrecovered excess of advancements to District, but which are recoverable by way of rental

credits under paragraph 9 of the Franchise Agreement Extension, over the amount allowed as rental credit thereunder for or during the period for which rentals are then being computed hereunder shall be treated as prepaid rent under the Franchise Agreement Extension and shall be deducted hereunder only as and when and in the amounts allowed to be deducted or withheld from rentals accruing to District. It is further understood and agreed that the total amount of advancement to District under the provisions of said paragraph 9 which are not recoverable by way of rent credits as therein provided may be deducted hereunder but only at the times and in the amounts that same are amortized by Operating Company in accordance with sound accounting principles;

(g) Maintenance and alterations expenses;

(h) Rentals on property sub-leased to Operating Company by Turf Club under instrument of even date herewith, such property being described as follows:

All of that certain portion of Pueblo Lot 1339 of the Pueblo Lands of San Diego County lying easterly of right of way of the Atchison, Topeka & Santa Fe Railway Co.;

(i) Amortization and depreciation charges made in accordance with good business practice;

(j) Insurance premiums, payroll taxes and insurance, utilities and public service;

(k) Executive and administrative expenses subject to the limitations of this Agreement;

(l) Franchise and personal property taxes and licenses, and motor vehicle licenses;

(m) Professional services, including legal retainers, stock transfer agent, and other professional services subject to the limitations of this Agreement;

(n) Printing, flowers, badges, uniforms and trophies;

(o) Dues paid to associations and clubs heretofore paid by the Turf Club and other miscellaneous office supplies and expenses; and

(p) Expenses and proceeds paid over to charities, attributable to three days of racing conducted for the account of Del Mar Charities as have heretofore been conducted by Turf Club so long as same shall continue to be conducted by mutual agreement between Turf Club and Operating Company by Operating Company; provided that no other charitable contributions of any kind shall be deducted in computing Net Profits hereunder;

but the term "Operating Expenses" as used herein expressly does not include Federal or State taxes based on income, and the amount of same shall not be deducted in computing Net Profits hereunder, provided that the term "taxes based on income" is not intended and shall not include corporate franchise taxes paid to the State of California.

C. It is understood that the first fiscal year of Operating Company will end September 30, 1954, and that the ending date of the fiscal year of Operating Company shall be September 30 in each year hereafter; and Operating Company covenants and agrees that the date for closing any fiscal year shall not be changed without the prior written consent of Turf Club. Net Profits, as hereinabove defined, shall be determined from an audit of the books and records of Operating Company, as of the fiscal year ending date, to be made and certified by Peat, Marwick, Mitchell & Co., or other independent certified public accountants satisfactory to Turf Club; and such audit shall be completed within fifty (50) days after the end of the fiscal year of Operating Company.

5. Turf Club has a present right, by reason of rental advancements heretofore made to the District, to withhold from rentals required to be paid to the District the total sum of Two Hundred Fifty Seven Thousand Four Hundred One Dollars (\$257,401) in accordance with paragraph 9 of the said Franchise Agreement Extension. For and in consideration of the sum of Two Hundred Fifty Seven Thousand Four Hundred One Dollars (\$257,401) Turf Club does hereby assign, transfer and set over to Operating Company such right and asset. Operating Company does hereby promise and agree to pay said consideration and same shall be paid by Operating Company to Turf Club in amounts equal to the amounts that Operating Company shall be entitled to withhold in accordance with said paragraph 9 of the Franchise Agreement Extension from rentals accruing to District as and when Operating Company shall be so entitled to withhold same.

6. In addition to all other covenants, agreements, obligations and undertakings on the part of Operating Company hereunder, Operating Company hereby represents and warrants, covenants, agrees, binds and obligates itself as follows:

(a) That Operating Company has issued 20 shares of its stock at a par value of \$1,000 per share, that the same is fully paid; and in order to secure the faithful and punctual observance, performance and compliance on the part of Operating Company of its covenants, obligations and undertakings under this Sub-Franchise Agreement, the stockholders of Operating Company concurrently herewith are executing and delivering to Turf Club a certain Pledge Agreement covering all of such stock and irrevocable proxies granting unto Turf Club, its substitutes, nominees or assigns, the right to vote all of such stock upon default; and Operating Company agrees not to issue any additional shares of stock of any class having voting rights without the prior written consent of Turf Club;

(b) That Operating Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California and that during the term hereof it will maintain its corporate existence, that it will punctually and fully perform and comply with all applicable and valid governmental laws, orders, rules and regulations, and that it will not consolidate or merge with or into any other corporation;

(c) That during the term hereof, without the prior written consent of Turf Club, it will not engage, either directly or in-

directly, in any business or activity except the business or activity of conducting and operating horse racing meets on the Premises and such other business or activities at or about the Premises as are reasonably necessary, incidental or desirable in connection with the conducting and operating of such horse racing meets;

(d) That it will not pay any dividends or make any distributions on or on account of its capital stock of any class when the effect thereof would or might be to reduce its earned surplus below an amount equal to the aggregate amount of all accrued rentals payable hereunder plus the minimum rental to become payable hereunder for the rental period next succeeding the rental period during which such dividend or distribution might be paid or made;

(e) That it will not pay any dividends or make any distribution on or on account of its capital stock of any class except out of earned surplus;

(f) That it will not, directly or indirectly, pay or cause or permit to be paid to any person, for its account, any salaries, wages, bonuses, commissions or other compensation, except for services actually rendered and then only for such services as are reasonably necessary to the carrying on of its business activities hereunder and as are usually and customary in the operation of such businesses by reasonably prudent operators of such businesses of like character and size and similarly situated, and any such salaries, wages, bonuses, commissions or other compensation shall bear reasonable and proper relation to the value of such services;

(g) That it will not, directly or indirectly, contract for, or permit to be contracted for its account, any services of any character to be performed by persons who are not on its regular payroll except such as are not performable by its own officers or employees in the usual and reasonable performance of their duties, and then only if such outside services are reasonably necessary or appropriate to the carrying on of its business activities hereunder or to the compliance with the terms hereof and the fees, or compensation of any character, payable for such services bear reasonable and proper relation to the value of such services.

(h) That during the term hereof, unless and until the written consent of Turf Club, or in case it has made an assignment thereof the holders of not less than seventy-five per cent (75%) in aggregate principal amount of the minimum rentals payable hereunder, shall have been obtained, it will not create, incur, assume, guarantee or permit to exist or in any manner be or become liable in respect of any indebtedness for borrowed money or in respect of any funded debt other than:

(i) unsecured bank or institutional loans maturing in not more than twelve (12) months from the date of origin, and renewals thereof for not more than one like period;

(ii) loans procured, indebtedness created or obligations incurred for or in respect of the payment of the purchase price of any additional capital equipment or other personal property (in addition to that presently owned or being acquired from Turf Club) actually acquired and used or useful in the normal and customary conduct of its permitted business activities hereunder, including all extensions and renewals of such loans, indebtedness and obligations, if any, provided, however, and Operating Company hereby covenants (a) that no such loan, indebtedness or obligation, or any renewal or extensions thereof, shall ever exceed eighty percent (80%) of the fair value of the property involved or of the purchase price thereof, whichever is lesser, (b) that the aggregate principal amount of all such loans, indebtedness and obligations at any one time outstanding shall not exceed the sum of \$50,000, and (c) that all such loans procured or indebtedness or obligations created shall be expressed to mature not later than twenty-four (24) months from the date same are procured, incurred or created; and in connection with any such loans, indebtedness or obligations Operating Company shall have the right to give, make and grant mortgages, pledges or other liens only upon the property involved and only as security for that portion of the purchase price for which such loans were procured, such indebtedness was created or such obligations were incurred; and

(iii) unsecured loans or advances from its stockholders, provided that the repayment of same shall be expressed to be subject, subordinate and inferior to any and all rentals and other payments required or permitted to be made hereunder, and provided that such lenders shall expressly agree not to demand or receive repayment of same if the effect of such repayment would or might be to impair the solvency of the company or its ability to meet when due all of its outstanding obligations, and provided further that the interest, if any, payable on such loans or advances shall not exceed six per cent (6%) or the average current interest rates being charged at the time such loans or advances are made by national banks in the City of Los Angeles, California, on unsecured loans to corporations, whichever is lesser;

(i) That it will cause to be made the annual audit required under paragraph 4.C above and will furnish to Turf Club a detailed report of such audit containing a balance sheet of the company as of the close of the fiscal year and a statement of the income account and surplus account for the period since the date of the last such balance sheet furnished hereunder or since the effective date hereof in the case of the first such statement and accompanied by the opinion of the independent certified public accountant or firm of certified public accountants making such audit as to whether or not Operating Company has complied with all of and is not in default in respect of any of its covenants, obligations and undertakings under this paragraph 6 of this Agreement; provided that insofar as such opinion might involve

the expression of a legal opinion, such accountant or firm of accountants may rely on or furnish the opinion of legal counsel, who may be of counsel to Operating Company;

(j) That it will pay before delinquent all rentals, taxes, assessments, levies and other payments and charges, and all expenses and indebtedness, required or permitted hereunder;

(k) That it will fully, faithfully and punctually perform, execute and comply with all of its obligations, covenants and undertakings hereunder;

(l) That it will conduct its business activities hereunder in a careful and prudent manner and will not acquire by purchase or become in any manner obligated for any property of any kind or character or make any expenditure or incur any liability which is not reasonably necessary to conduct of its permitted business activities hereunder as same is then being actually conducted;

(m) That it will not go into voluntary bankruptcy or insolvency or apply for or consent to the appointment of a receiver or trustee of itself or its property or make any assignment for the benefit of its creditors, or suffer any order adjudicating it to be bankrupt or insolvent or appointing a receiver or trustee of it or its property;

(n) That it will use its best efforts and due diligence each and every year during the term hereof to secure a license or authority from the California Horse Racing Board to conduct horse racing meets at the Premises for the number of days and of the character heretofore conducted by Turf Club;

(o) That it will not pay or otherwise be or become liable or obligated, for its own account, for any purses or breeders' fees or other similar fees or items except of the character and in the amounts substantially similar to those which Turf Club has heretofore customarily paid or become obligated for;

(p) That, except as herein otherwise expressly provided, it will not pledge, mortgage or otherwise encumber or subject to any lien, charge or encumbrance any assets or property of any kind or character owned or held by it; provided that this restriction shall not apply to nor operate to prevent:

(i) liens, pledges or deposits in connection with workmen's compensation, unemployment insurance, old age benefit or social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith deposits required to be made in the ordinary course of business, provided in each case the obligation is not overdue or if overdue is being contested in good faith by appropriate proceedings, or

(ii) the pledge of assets for the purpose of securing a stay or discharge in the course of any legal proceedings;

(q) That Turf Club, its duly appointed agents and representatives, shall have access, for the purpose of examination, to the books and records of Operating Company from time to time during reasonable business hours and Operating Company agrees to

take all reasonable steps appropriate to facilitate the exercise of this right;

(r) That it will not make any loans or advances to, or guarantee or assume any obligation of, any subsidiary, affiliate, officer, director, stockholder or employee of Operating Company or any other person, or entity whomsoever or whatsoever, provided that this restriction shall not prohibit it from making advances of expense money to any officer, director, stockholder, employee, agent or representative in connection with its normal and permitted business activities hereunder;

(s) That it will not sell or otherwise dispose of any of its property under any contract or arrangement which provides for or contemplates the leasing back to it of such property or if thereby it shall be or become obligated or liable for the payment of any rentals on or for the repair, maintenance or replacement of any such property;

(t) That it will not sell at a discount or otherwise sell or assign any bills receivable, accounts receivable, notes receivable, credit claims or choses in action or any securities at any time held by it under any conditions or in any manner whereby there may be imposed on it any liability by way of endorsement, guaranty, agreement to re-purchase or with respect to the collectibility thereof;

(u) Operating Company does hereby covenant and agree that it will not negotiate for or accept any lease or franchise extension or renewal direct from District covering the Premises or any lands, improvements or appurtenances to be used in connection with the operation of the Premises or the business activities of Operating Company thereon;

(v) That Operating Company does hereby assume and agree to be and remain bound by all of the terms, provisions, covenants and conditions on the part of Turf Club contained in the afore-said Franchise Agreement dated the 8th day of December, 1936, and the Franchise Agreement Extension, made on the 17th day of August, 1953, by and between District and Turf Club, and any and all other agreements in force between Turf Club and District relating to the Premises;

(w) That it will pay the rentals, and perform all of the obligations of Turf Club, under that certain lease dated June 15, 1953, between Ed Fletcher Co., as Lessor, and Turf Club, as Lessee, covering the property described under sub-paragraph (h) on Page 5 hereof which is being sub-leased by Turf Club to Operating Company concurrently herewith.

7. A. Operating Company hereby assumes and agrees to observe and perform all of the obligations of the Lessor, Del Mar Turf Club, under a certain agreement dated August 1, 1951, by and between Hollywood Turf Club, Western Harness Racing Association, Building Service Employees International Union, Local Nos. 76, 193, 399, 280 and 102, and International Brotherhood of Teamsters, Chauffeurs and Warehousemen Helpers of America, Local Nos. 495, 481 and 542. Del Mar

Turf Club hereby assigns and transfers to Operating Company all of its rights and interest in and to said Agreement dated August 1, 1951.

B. Operating Company hereby assumes and agrees to perform and comply with the obligations of Turf Club under certain subsisting employment agreements with Clive Becker, John C. Burns and Eddie Read according to the terms thereof.

8. Operating Company hereby agrees to procure and maintain in force all insurance of every kind as required in the Franchise Extension Agreement and to indemnify and hold harmless Turf Club and the Twenty-second District Agricultural Association from any and all claims, demands, loss, cost or expense asserted against or suffered by Turf Club and the Twenty-second District Agricultural Association, or either of them, for injury to person or property resulting from or arising out of Operating Company's use and occupancy of or activities in connection with the Premises; and, in addition, Operating Company covenants and agrees that it will at all times, at its sole cost and expense, procure and maintain in force policies of insurance as follows:

(i) Comprehensive, Dishonesty, Destruction and Disappearance Insurance with not less than the following amounts of coverage:

- On Insuring Agreement 1 (Employees' Dishonesty), \$100,000;
- On Insuring Agreement 2 (Premises Coverage), \$2,000;
- On Insuring Agreement 4 (Incoming Check Forgery), \$5,000;
- On Insuring Agreement 5 (Deposit Forgery), \$10,000.

Provided that during periods when Operating Company is conducting thoroughbred racing meets, and/or other racing meets, the amount of insurance coverage under Insuring Agreements 1 and 2 above shall be increased to amounts sufficient to cover the minimum exposure existing during such periods.

(ii) Fire, Extended Coverage, Boiler Explosion, Machinery Breakdown, Sprinkler Leakage, and Earthquake Insurance for not less than ninety per cent (90%) of the full replacement value, without deduction for depreciation, blanket, with no distribution average clause, on all buildings, improvements, betterments and contents; and

(iii) With respect to said buildings, improvements, betterments and contents, Use and Occupancy Insurance, sometimes called Business Interruption Insurance, against each and every peril set forth in (ii) above for an amount equivalent to the amount of anticipated profits of Operating Company and Turf Club (but in any event for not less than an amount equal to the Net Profits, as such term is herein defined, attributable to the preceding rental period hereunder during which Net Profits were made) plus an amount equal to the continuing costs and expenses for the period of time it would take to replace the buildings, improvements, betterments and contents if same were destroyed or damaged by one of said perils, plus an amount equal to State and Federal taxes on income attributable to such profits.

All insurance required in this paragraph 8 shall be procured from responsible insurance companies or carriers satisfactory to Turf Club and shall be written on forms and in amounts satisfactory to Turf Club. Satisfactory evidence of such insurance shall be delivered to Turf Club at the commencement of the term of this Agreement, and satisfactory evidence of renewals thereof shall be delivered to Turf Club at least ninety (90) days prior to the expiration date of the respective policies.

In case Operating Company shall at any time fail, neglect or refuse to insure such buildings and improvements and to keep the same insured as hereinbefore provided, then Turf Club may at its election procure or renew such insurance and any amount paid therefor by Turf Club shall be so much additional rental due from the Operating Company to Turf Club and shall be a demand obligation owing by Operating Company to Turf Club bearing interest at the rate of seven per cent (7%) per annum from the date demand for the repayment thereof is given by Turf Club until the repayment thereof to Turf Club by Operating Company.

In the event of damage to or destruction of the building, buildings or improvements located on the Premises during the term hereof to the extent of seventy-five percent (75%), or more, of the full insurable value thereof, and provided the fire or other casualty causing the damage or destruction is insured against under policies of insurance then in force and procured by Operating Company under and in accordance with the terms hereof, then Operating Company may, at its option and election and in lieu of repairing, restoring or rebuilding such building, within sixty (60) days from the date of adjustment of the loss, terminate this Sub-Franchise Agreement by giving to Turf Club written notice of termination and making payment to Turf Club of the entire amount of proceeds of insurance payable by reason of such loss, together with the "Excess Loss", if any, as defined and provided for below. In case Operating Company shall be obligated to repair, restore or rebuild (either by reason of inapplicability of the foregoing provisions granting Operating Company an option to terminate this Agreement or by reason of Operating Company's failure within the time hereinabove provided to exercise any such option when such provisions are applicable) and (a) in case Operating Company shall have failed within sixty (60) days after the final settlement and payment of the loss by the insurer (subject to delays beyond Operating Company's reasonable control), to commence to repair, restore or rebuild the building or buildings, or improvements so damaged or destroyed, or (b) in case Operating Company, after having commenced such repair, restoration or rebuilding, shall fail to prosecute same to completion with reasonable diligence and dispatch (subject to delays beyond the reasonable control of Operating Company), then and in either of such events, Turf Club shall have the right and option to terminate this Agreement and require Operating Company to pay over to it, and Operating Company shall forthwith pay over to Turf Club the entire amount of the proceeds of insurance paid or payable by reason of the said loss, together with the Excess Loss, if any, whereupon the leasehold estate shall forthwith terminate; or Turf Club may require Operating Company to pay over to it the entire proceeds

of insurance paid or payable by reason of said loss and proceed to repair, restore or rebuild the buildings or other improvements so damaged or destroyed and recover from Operating Company all reasonable and proper and advances made and costs and liabilities incurred by Turf Club in so doing, to the extent that the same may exceed the proceeds of insurance, in which event this Sub-Franchise Agreement shall remain in full force and effect.

The "Excess Loss", as said term is used herein, shall mean a sum computed as follows: (1) by taking the amount of all proceeds of insurance procured by Operating Company and paid or payable with respect to the damage or destruction on account of which this agreement was terminated; (2) by then taking the present value as of the effective date of such termination (computed by discounting the same at the rate of five per cent (5%) per annum), of the minimum rentals payable to Turf Club hereunder for the unexpired period of the term hereof and subtracting therefrom the sum of \$100,000. "Excess Loss" shall consist of the amount, if any, by which the result of the computation provided for in clause (1) hereof may be less than the result of the computation provided for in clause (2) hereof. Such payment of Excess Loss is not intended as a penalty, but is intended (a) in case of Operating Company's exercise of the option conferred upon Operating Company by this section to terminate this Agreement, as a condition to and as consideration for the exercise of such option; or (b) in case of Turf Club's exercise of the option conferred upon Turf Club by this section to terminate this Agreement in the event of Operating Company's failure to repair, restore or rebuild when obligated so to do by virtue of this Agreement, as liquidated damages for such breach. In any event Operating Company shall continue to remain liable for the payment of all rentals hereunder until the date of any such termination of this Agreement.

9. Except as otherwise specifically provided herein, damage to or destruction of any portion or all of the buildings, improvements or fixtures on the premises from whatever cause, whether with or without fault on the part of Operating Company, shall not terminate this Agreement or entitle Operating Company to surrender the Premises or entitle Operating Company to any abatement of or reduction in rentals payable hereunder, or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding. If the use of the Premises contemplated hereunder should at any time during the term hereof be prohibited by law or ordinance or other governmental regulation or prevented by injunction, or if there be any eviction by title paramount, this Agreement shall not be thereby terminated, nor shall Operating Company be entitled by reason thereof to surrender the Premises or to any abatement or reduction in the rentals payable hereunder nor shall the respective obligations of the parties hereto be otherwise affected.

10. Operating Company shall not allow or permit any transfer of this Agreement or any interest hereunder by operation of law, or assign, convey, mortgage, pledge or encumber this Agreement or any interest hereunder, or permit the use or occupancy of the Premises or any part thereof by anyone other than Operating Company or Operating Company's subtenants without, in each case, Turf Club's consent in

writing first had and obtained. If Operating Company, with Turf Club's consent, assigns or conveys this Agreement or any interest hereunder, no such assignment or subletting shall release the Operating Company from any of its obligations hereunder. Operating Company may at any time and from time to time sublet any part or parts of the leased premises for any purpose permitted hereunder; provided, however:

(a) Operating Company shall not, without the prior written consent of Turf Club, sublet the entire or any substantial portion of the Premises to a single sublessee, or sublet any of the actual racing facilities;

(b) Each sublease made by Operating Company of any portion of the Premises shall contain a sufficient reference to this Agreement so as to put the sublessee upon notice of the terms and provisions of this Agreement and each sublease made by Operating Company of any substantial portion of the Premises shall expressly provide that it is made subject to the terms hereof and shall contain apt provisions whereby the sublessee shall agree not to violate any of the terms or provisions of this Agreement;

(c) No sublease shall extend beyond the term of this Agreement;

(d) No subletting shall release the Operating Company from its obligations hereunder;

(e) Operating Company shall cause all sublessees and all persons claiming by, through or under them to comply strictly with the terms and provisions of this Agreement and take such steps as may be necessary to enforce compliance herewith.

11. Operating Company agrees to permit Turf Club, its authorized agents or representatives, to enter the Premises at all times during reasonable business hours for the purpose of inspecting same.

12. A. If Operating Company shall make default in the payment of the rentals or any part thereof when due as herein provided, or in any of the other covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Operating Company, and such default shall continue for thirty (30) days after notice thereof in writing to Operating Company, or if (a) proceedings in bankruptcy or for a corporate reorganization (which would affect creditors of the Operating Company) be filed by Operating Company or such proceedings be filed against Operating Company and an order of adjudication or order approving the petition be entered in such proceedings, or (b) a receiver or trustee is appointed for all or substantially all of Operating Company's business or assets, or (c) a trustee is appointed for it after a petition has been filed for the Operating Company's reorganization under the Bankruptcy Act of the United States, or if Operating Company shall make an assignment for the benefit of its creditors, or shall vacate or abandon the Premises, then and in any such event it shall be lawful for Turf Club, at its election, to declare the term of this Agreement ended and the said Premises and the buildings and improvements then situated thereon or any part thereof, either with or without process of law, to re-enter, and Operating Company and all persons occupying in or upon the same under it to expel, remove and put out, using such force as may be necessary in

so doing, and the said Premises and the buildings and improvements then situated thereon again to repossess and enjoy as in their first and former estate, without such re-entry and repossession working a forfeiture of the rents to be paid and the covenants to be performed by Operating Company during the full term of this Agreement. If default shall be made in any covenant, agreement, condition or undertaking herein contained to be kept, observed and performed by Operating Company, other than the payment of rent as herein provided, which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to Turf Club, and if Operating Company, prior to the expiration of thirty (30) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure such default, then Turf Club shall not have the right to declare the said term ended by reason of such default; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of Turf Club to declare said term ended and enforce all of its rights and remedies hereunder for any other default not so cured.

B. The foregoing provisions for the termination of this Agreement for any default in any of its covenants shall not operate to exclude or suspend any other remedy of Turf Club for breach of any of said covenants or for the recovery of said rent of any advance of Turf Club made thereon, and in the event of the termination of this Agreement as aforesaid, Operating Company covenants and agrees to indemnify and save harmless Turf Club from any loss arising from such termination and re-entry in pursuance thereof, and to that end Operating Company covenants and agrees to pay to Turf Club after such termination and re-entry, at each subsequent date herein provided for payment of rentals to Turf Club during the term hereof, the difference between the net income actually received by Turf Club from said Premises for and during the period since the last such rental payment date and the total rentals agreed to be paid by the terms of this Agreement to Turf Club, together with the expenses of reletting said Premises, together with commissions and attorneys' fees. All payments made by Operating Company to Turf Club under the provisions of this paragraph shall relieve and discharge the Operating Company of all further liability for rental hereunder for the period or periods in question.

13. A. No remedy herein or otherwise conferred upon or reserved by Turf Club shall be considered exclusive of any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now hereafter existing at law or in equity or by statute, and every power and remedy given by this Agreement to Turf Club may be exercised from time and as often as occasion may arise or as may be deemed expedient. No delay or omission of Turf Club to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein.

B. No waiver of any breach of any of the covenants of this Agreement shall be construed, taken or held to be a waiver of any other

breach or waiver, acquiescence in or consent to any further or succeeding breach of the same covenant.

C. Neither the rights herein, given to receive, collect, sue for or distress for any rent or rents, monies or payments or to enforce the terms, provisions and conditions of this Agreement, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall in any way affect or impair or toll the right or power of Turf Club to declare the term hereby granted ended and to terminate this Agreement as herein provided because of any default in or breach of any of the covenants, provisions or conditions of this Agreement.

14. Whenever the said term herein demised shall be terminated, whether by lapse of time, forfeiture or in any other way, Operating Company covenants that it will at once surrender and deliver up said Premises, including the buildings and improvements thereon and the machinery, fixtures and equipment therein contained, peaceably to Turf Club, and if Operating Company shall thereafter remain in possession thereof, it shall be deemed guilty of unlawful detainer of the premises under the statute and shall be subject to all the conditions and provisions above named and to ejection and removal, forcibly or otherwise, with or without process of law as above stated.

15. All of the covenants, agreements, conditions and undertakings in this Agreement contained shall extend and inure to and be binding upon the successors and assigns of the respective parties hereto, the same as if they were in every case specifically named, and shall be construed as covenants running with the land, and wherever in this Agreement reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the successors and assigns of such party.

16. Operating Company hereby grants to Turf Club a lien upon all property of Operating Company situated in, upon or about the premises for all rental due or to become due hereunder, but not otherwise.

17. Should Operating Company at any time fail to do any of the things required to be done by it under the provisions hereof and should such default continue after written notice thereof from Turf Club to Operating Company specifying the particulars of such default, Turf Club at its option, and in addition to any and all other rights and remedies of Turf Club in such event, may, but shall not be obligated to, do the same or cause the same to be done, and the reasonable amount of any money expended by Turf Club in connection therewith shall be so much additional rental due from Operating Company to Turf Club and shall be a demand obligation owing by Operating Company to Turf Club bearing interest at the rate of seven per cent (7%) per annum from the date demand for the repayment thereof is given by Turf Club until the repayment thereof to Turf Club by Operating Company.

18. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. For the term hereof Turf Club does hereby assign and set over to the Operating Company the rights to receive all monies payable by

District for the general maintenance of the area outlined in yellow on "Exhibit One" on a year-round basis, as provided in the Franchise Agreement Extension.

This Agreement is not intended nor shall it be construed to create as between the parties hereto any partnership of any kind, association or joint venture, or any relationship other than that of Lessor and Lessee.

IN WITNESS WHEREOF, Turf Club and Operating Company have caused these presents to be executed in their respective corporate names by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in a number of counterparts, each of which shall be deemed an original, this 26th day of July, A.D. 1954.

DEL MAR TURF CLUB

By H. M. SMITH
President

By EUGENE L. STOCKWELL, JR.
Secretary

APPROVED:
DEPT. OF FINANCE
July 27, 1954

OPERATING COMPANY

By W. H. BLACK
President

By EUGENE L. STOCKWELL, JR.
Secretary

We hereby consent to and approve the foregoing Agreement between the Del Mar Turf Club and Operating Company regarding the rental of certain horse racing facilities in the County of San Diego, in the vicinity of Del Mar, California.

It is further understood and agreed that the consent of the undersigned, Twenty-Second District Agricultural Association, to this Sub-Franchise Agreement does not waive its right to consent to a further sub-lease or any assignment of the Premises by either party to the foregoing Agreement.

DATED: This 26th day of July, A.D. 1954.

22ND DISTRICT AGRICULTURAL ASSN.

By DONALD A. BRIGGS
Vice President

By PAUL T. MANNEN
Secretary-Manager

Exhibit 9

ASSIGNMENT AND GRANT DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, DEL MAR TURF CLUB, a California corporation, for and in consideration of the sum of Two Hundred Fifty Thousand Dollars (\$250,000), does by these presents, assign, transfer, set over, grant and deliver unto BOYS INCORPORATED OF AMERICA, a Delaware corporation, the following described contracts, rights, estates, interests and real property, to-wit:

(a) That certain Franchise Agreement entered into under date of the 8th day of December, 1936, for the Rental of certain horse racing facilities in the County of San Diego in the vicinity of Del Mar, California, by and between the Twenty-second District Agricultural Association and Del Mar Turf Club, for a term of ten (10) years, commencing on January 1, 1937, and extended by various agreements to December 31, 1969, the last of said extension agreements, herein and elsewhere referred to as the "Franchise Agreement Extension," being dated the 17th day of August, 1953, and all rights, titles, interests and estates thereunder or incident thereto, as well as all rights, titles, interests and estates of Del Mar Turf Club under any and all other contracts and agreements subsisting between Del Mar Turf Club and the Twenty-second District Agricultural Association; subject, however, to the terms and provisions of that certain Sub-Franchise Agreement mentioned in the succeeding paragraph hereof;

(b) That certain Sub-Franchise Agreement entered into on the 26th day of July, 1954, by and between the said Del Mar Turf Club and Operating Company, a California corporation, wherein the said Del Mar Turf Club sub-leased and sub-let unto the said Operating Company the horse racing facilities under and covered by the Franchise Agreement Extension for a period of years to expire on December 30, 1969, together with all rights thereunder or incident thereto; subject, however, to the exceptions and reservations hereinafter set forth;

(c) That certain Indenture of Lease bearing the date of June 15, 1953, entered into by and between the Ed Fletcher Company of San Diego, California, as Lessor, and the said Del Mar Turf Club, as Lessee, covering those certain premises situate in the County of San Diego, State of California, described as:

All that portion of Pueblo lot 1339 of the Pueblo Lands of San Diego lying easterly of the right-of-way of the Atchison, Topeka & Santa Fe Railway Company;

subject, however, to that certain Sublease dated the 26th day of July, 1954, made and entered into by and between the said Del Mar Turf Club and the said Operating Company covering and affecting rights and obligations of Del Mar Turf Club in and under such Indenture of Lease;

(d) The rights, titles and interests of Del Mar Turf Club in and under the aforesaid Sublease dated the 26th day of July, 1954, by and between Del Mar Turf Club and Operating Company;

(e) The lien and all and singular the rights, privileges, powers and benefits held by and to accrue to Del Mar Turf Club under that certain Collateral Pledge Agreement dated the 26th day of July, 1954, executed and delivered by the stockholders of Operating Company unto Del Mar Turf Club to secure and enforce payment and performance by Operating Company of all and singular its obligations and undertakings under the aforesaid Sub-Franchise Agreement;

(f) That certain real property situate in the County of San Diego, State of California, described as follows;

Parcel I: Lot 6 (in the Northeast Quarter of the Southeast Quarter) of Section 25, Township 14 South, Range 4 West, S.B.M., except the abandoned railroad right of way.

Also the Southeast Quarter of the Northeast Quarter of Section 25, Township 14 South, Range 4 West, S.B.M., according to U. S. Government Survey approved January 18th, 1876.

Parcel II: Lots 1, 2 and 3 (in the Northwest Quarter) of Section 25, Township 14 South, Range 4 West, S.B.M., except the Del Mar Terrace, according to the Map thereof No. 1527 filed in the office of Recorder February 5, 1913; Lot 4 (in the Southwest Quarter of the Northeast Quarter) of Section 25, Township 14 South, Range 4 West, S.B.M., according to U. S. Government Survey approved January 18th, 1876.

Parcel III: The West Half of the Northeast Quarter; the Southeast Quarter of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section 24, Township 14 South, Range 4 West, San Bernardino Meridian in the County of San Diego, State of California, according to United States Government Survey approved January 18, 1876;

Excepting therefrom, that portion of the above described property lying easterly of the county road known as the Sorrento Road, running North and South through said Southeast Quarter of the Northeast Quarter and said Northeast Quarter of the Southeast Quarter,

with all and singular the premises therein mentioned and described and the buildings and improvements thereon, together with the appurtenances.

TO HAVE AND TO HOLD unto the said BOYS INCORPORATED OF AMERICA, its successors and assigns, the said Franchise Agreement, the said Franchise Agreement Extension and other agreements subsisting between Del Mar Turf Club and the Twenty-second District Agricultural Association, and the said Sub-Franchise Agreement, the said Indenture of Lease and the said Sublease, from this 26th day of July, 1954, for and during the remainder of the term of said instruments, together with all and singular all rights, titles, interests, estates and benefits thereunder or incident thereto; SUBJECT, nevertheless, to the rents, covenants, conditions and provisions therein mentioned and

to the exceptions and reservations herein set forth; and the said real property hereinabove particularly described, forever.

The aforesaid consideration of \$250,000 is paid and payable as follows: The sum of \$5,000 in cash upon the execution and delivery of this instrument, the receipt and sufficiency of which is hereby acknowledged and confessed, and the balance of \$245,000 is evidenced by a certain promissory note of even date herewith in the principal sum of \$245,000, bearing interest at the rate of six per cent (6%) per annum on the balance of principal and interest from time to time unpaid, with principal and interest due on or before eleven (11) years from the date of issue, executed by the President and Secretary for and in behalf of BOYS INCORPORATED OF AMERICA; and the payment of the indebtedness evidenced by said note is secured by a certain Trust Deed of even date covering that certain real property hereinabove described in paragraph (f) and is further and additionally secured by a certain Pledge Agreement of even date, executed and delivered by BOYS INCORPORATED OF AMERICA unto Del Mar Turf Club, covering, pledging and hypothecating all and singular the lease-hold estates, contracts, rights, titles and interests herein assigned and conveyed to BOYS INCORPORATED OF AMERICA.

It is further understood and agreed, and as part of the consideration for the execution of this Assignment and Grant Deed, Del Mar Turf Club hereby excepts and reserves to itself, its successors and assigns, the rentals to accrue and to be derived from and under the aforesaid Sub-Franchise Agreement, and therein referred to as "additional rental", for a maximum period of ten (10) years from the date hereof, or until Del Mar Turf Club, its successors or assigns, has received in cash from such rentals herein excepted and reserved the full net sum of One Million Seven Hundred Eighty Thousand Dollars (\$1,780,000), plus an amount equal to interest at the rate of six per cent (6%) per annum on the declining balance of said sum, whichever occurs first; and in order to secure unto Del Mar Turf Club the rentals herein excepted and reserved, BOYS INCORPORATED OF AMERICA by its acceptance of this Assignment and Grant Deed agrees and binds and obligates itself, upon written request therefor by Del Mar Turf Club, its successors or assigns, to, in good faith and with reasonable diligence, take such steps, perform such acts and deeds, and exercise such rights, privileges and powers, under the aforesaid Sub-Franchise Agreement, Sublease and/or Collateral Pledge Agreement, as may be provided or permitted thereunder or at law or in equity, reasonably necessary or appropriate to preserve, protect, enforce and secure unto Del Mar Turf Club, its successors and assigns, the said rentals and the payment thereof; provided that BOYS INCORPORATED OF AMERICA shall not be compelled or required hereby to take any such step, perform any such act or deed, or exercise any such right, privilege or power, or prosecute or defend any suit in respect thereof, unless and until indemnified to its satisfaction against loss, cost, liability and expense.

Operating Company, its successors and assigns, is hereby authorized and directed to pay direct to Del Mar Turf Club, its successors and assigns, all rentals payable under the aforesaid Sub-Franchise Agreement, and therein referred to as "additional rental", as and when the

same become due and payable until it has been given written notice that the right of Del Mar Turf Club to receive such rentals reserved hereunder has been satisfied and discharged.

This instrument is executed in a number of counterparts, each of which is to be deemed an original, and shall extend and inure to the benefit of and be binding upon the said Del Mar Turf Club and the said BOYS INCORPORATED OF AMERICA and their respective representatives, successors and assigns.

IN WITNESS WHEREOF, the said DEL MAR TURF CLUB and the said BOYS INCORPORATED OF AMERICA have caused this instrument to be executed and delivered and their respective corporate seals to be hereunto affixed by their respective officers hereunto duly authorized by resolution of their respective Boards of Directors on the 26th day of July, 1954.

DEL MAR TURF CLUB

/s/ By H. M. SMITH
President

/s/ By EUGENE STOCKWELL JR.
Secretary

BOYS INCORPORATED OF AMERICA

/s/ By C. W. MURCHISON
President

/s/ By JOHN D. MURCHISON
Secretary

The undersigned, Twenty-second District Agricultural Association, hereby consents to and approves the above and foregoing Assignment to Boys Incorporated of America of the above mentioned Franchise Agreement, Franchise Agreement Extension and other agreements in force between Del Mar Turf Club and the undersigned, hereby ratifying and confirming same unto the said Boys Incorporated of America.

DATED: July 26, 1954.

TWENTY-SECOND DISTRICT AGRICULTURAL ASSOCIATION

/s/ By D. A. BRIGGS
Vice President

/s/ By PAUL T. MANNEN
Secretary-Manager

The undersigned, Ed Fletcher Co., hereby consents to and approves the above and foregoing Assignment to Boys Incorporated of America of the above mentioned Indenture of Lease, and does hereby release and discharge Del Mar Turf Club from and under such instrument, hereby ratifying and confirming same unto the said Boys Incorporated of America.

ED FLETCHER CO.

By _____

By _____

THE STATE OF CALIFORNIA }
COUNTY OF } ss.

On this _____ day of July, 1954, before me, _____, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ and _____, known to me to be the President and Secretary of DEL MAR TURF CLUB, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Notary Public in and for the
County of
STATE OF CALIFORNIA

THE STATE OF CALIFORNIA }
COUNTY OF } ss.

On this _____ day of July, 1954, before me, _____, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ and _____, known to me to be the President and Secretary of BOYS INCORPORATED OF AMERICA, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Notary Public in and for the
County of
STATE OF CALIFORNIA

o

PROGRESS REPORT TO THE LEGISLATURE
by the
**SENATE INTERIM COMMITTEE ON
CALIFORNIA INDIAN AFFAIRS**

(Senate Resolution No. 171)

MEMBERS OF THE COMMITTEE

SENATOR CHARLES BROWN, *Chairman*

SENATOR STANLEY ARNOLD

SENATOR NELSON S. DILWORTH

JOHN A. BOHN

Counsel and Executive Secretary

Published by the
SENATE
OF THE STATE OF CALIFORNIA

GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

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LETTER OF TRANSMITTAL

*The Honorable Glenn M. Anderson, President and
Members of the Senate.*

GENTLEMEN: Your Senate Interim Committee on California Indian Affairs, created by Senate Resolution No. 171, presents herewith the progress report of its activities and the results of its investigations, together with its recommendations.

Respectfully submitted,

CHARLES BROWN
STANLEY ARNOLD
NELSON S. DILWORTH

SENATE RESOLUTION NO. 171, AS AMENDED

Relative to the creation of the Senate Interim Committee on California Indian Affairs

WHEREAS, The Government of the United States is contemplating action to terminate all federal trusteeships with regard to California Indians; and

WHEREAS, There are several bills pending or to be introduced in the Congress of the United States that will vitally affect in many particulars the welfare of California Indians and also the welfare of the State of California; now, therefore, be it

Resolved by the Senate of the State of California, As follows:

1. The Senate Interim Committee on California Indian Affairs is hereby created, and authorized and directed to ascertain, study and analyze all facts relating to the welfare of California Indians and particularly to legislation now pending before the Congress of the United States or that may be hereafter introduced relating to the welfare of the Indians of California and to the interests of the State of California therein and to means of assisting the Indians of California to secure their full rights and the benefits that they may be entitled to, and including means of integrating termination of federal supervision over Indians with state activities with respect to Indian affairs, including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Senate, including in the reports its recommendations for appropriate legislation.

2. The committee shall consist of three Members of the Senate appointed by the Committee on Rules thereof. Vacancies occurring in the membership of the committee shall be filled by the appointing power.

3. The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1959 Regular Session, with authority to file its final report not later than the thirtieth legislative day of that session.

4. The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Senate as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5. The committee has the following additional powers and duties:

- (a) To select a chairman and a vice chairman from its membership.
- (b) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(c) To co-operate with and secure the co-operation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(d) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(e) To meet and act both within and without the boundaries of the State of California in pursuing the investigation committed to it.

(f) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

6. The sum of fifteen thousand dollars (\$15,000) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Senate for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution, to be paid from the said contingent fund and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer.

Resolution read, as amended.

The roll was called, and the resolution adopted by the following vote:

AYES—Senators Abshire, Arnold, Beard, Berry, Breed, Brown, Burns, Busch, Byrne, Christensen, Cobey, Collier, Coombs, Cunningham, Desmond, Dilworth, Dolwig, Donnelly, Dorsey, Erhart, Farr, Gibson, Grunsky, Holister, Ed. C. Johnson, Harold T. Johnston, Kraft, McBride, John F. McCarthy, Robert I. McCarthy, Miller, Montgomery, Murdy, Regan, Richards, Short, Sutton, Teale, Thompson, and Williams—40.

NOES—None.

INTRODUCTION

Reference is made to the report of the Senate Interim Committees on Indian Affairs created by Senate Resolution No. 115 at the 1953 session of the California Legislature and by Senate Resolution No. 124 at the 1955 session of the California Legislature. The 1955 report contains a substantial amount of background material, including excerpts from hearings held throughout the State, regarding the problems of the various Indian groups within this State. The 1957 report describes the steps and procedures followed by the committee in an attempt to solve the many and varied problems outlined in the first report.

The present report is supplemental to its predecessors. Particularly it is supplemental to the 1957 report in that it outlines the further procedures that have been undertaken to solve those problems which were raised in the 1955 report.

It therefore seems appropriate to repeat in full the conclusions and recommendations of the predecessor committees in order to facilitate a better understanding of the background of the overall problems, what has been done to date to solve them, and what can and should be done in the future to further correct the problems that have come to light because of the investigations of this committee. These conclusions and recommendations read in full as follows:

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE (1957 REPORT)

The committee has again reviewed the recommendations and conclusions contained in the report of the predecessor committee issued in 1955 and believes, in general, the pattern therein set forth is sound and if followed would provide for orderly termination. However, with minor exceptions the committee is compelled to report that very little has been done to carry out the recommendations set forth in the previous report.

STATE LEGISLATION

Insofar as the State of California is concerned subparagraph (e) of the recommendations concerning the validation of custom marriages for inheritance purposes has been accomplished. In the 1957 session of the California Legislature there was passed, and the Governor signed into law, Chapter 2121 which reads as follows:

CHAPTER 2121 Statutes of 1957

An act to add Section 182 to the Civil Code, relating to the relation of husband and wife.

The people of the State of California do enact as follows:

SECTION 1. Section 182 is added to the Civil Code, to read:

182. For the purpose of application of the laws of succession set forth in the Probate Code to a decedent who died prior to September 11, 1958, an alliance, which by custom of the Indian tribe, band, or group of which the parties to the alliance, or either of them, are members is commonly recognized in such tribe, band, or group as marriage, is deemed a valid marriage under the laws of this State. In the case of such marriages and for such purpose a separation, which by custom of the Indian tribe, band, or group of which the separating parties, or either of them, are members is commonly recognized in such tribe, band, or group as a dissolution of marriage, is deemed a valid divorce under the laws of this State.

This section shall be effective and shall apply only to the extent that such marriages or separations would affect succession to property subject to the laws of this State.

FEDERAL LEGISLATION

Effective implementation of the recommendations contained in the report of the predecessor committee, of course, requires federal legislation and proper execution by the Bureau of Indian Affairs. The text of such legislation to be enacted by the Congress of the United States is a question of federal policy and not within the control of this committee. However, it is the opinion of this committee that there will never be effective termination of federal supervision over Indian trust lands in California until the Congress of the United States has passed a general statewide bill which provides not only for ultimate termination but specifies in some detail the steps which must be taken by the Bureau of Indian Affairs and the Indians involved prior to termination.

This committee believes that the State of California is ready, willing and able to co-operate with the Government of the United States in an effective termination program and has received pledges from the Office of the Governor and the state departments that the resources of the state government can be used as indicated in this report to aid the Indians during the transition period. At the end of such transition period, if the recommendations in this report are carried out, it is believed that all distinctions between the affairs of the Indians and those of other Californians will have been removed.

1. RECOMMENDED TERMINATION BILL

The following bill is recommended by this committee to the Congress of the United States for passage. Such passage, it is believed, will provide a framework within which the executive agencies of the federal and state governments can accomplish an orderly and fair termination of federal supervision over Indians in California.

A BILL

To provide for certain preliminary actions that need to be taken before federal supervision over Indian affairs in California can be terminated.

Be it enacted by the Senate and House of Representatives in the United States of America in Congress assembled, that the membership of each tribe, band, or other group of Indians in California for which the United States holds title to property in trust, or which owns property subject to restriction against alienation imposed by the United States, shall be closed as of midnight of the date of the enactment of this act, and no child born thereafter shall be eligible for membership. A membership roll for each such group shall be prepared in accordance with regulations governing procedures, time limitations and eligibility requirements prescribed by the Secretary of the Interior (hereafter called the Secretary), after consultation with the Indians affected, notwithstanding the eligibility requirements prescribed in any tribal constitution or other provisions of law. General notice of proposed regulations shall be given and interested persons shall be afforded an opportunity to present their views and arguments to the Secretary before the regulations are issued. The procedures included in such regulations shall provide for the publication in the Federal Register of a proposed roll of the members of the group who are living at midnight on the date of this act, and for the right to file an appeal with the California Indian Appeals Board, appointed pursuant to Section 2 of this act, contesting the inclusion or omission of the name of any person on or from such roll. The California Indian Appeals Board shall review such appeals, giving due consideration to the recommendations given and evidence adduced, and the decision of the board thereon shall be final and conclusive. Before making a decision the board may recommend that the Secretary modify the eligibility requirements previously established. After disposition of all such appeals,

the roll shall be published in the *Federal Register* and shall be final. The provisions of this section shall create no individual property rights in the property of such groups.

SEC. 2. The Secretary shall establish a board to be known as the California Indian Appeals Board which shall be composed of three employees within the Department of Interior who are not in the Bureau of Indian Affairs.

SEC. 3. The Secretary is directed, within the limits of available appropriations, to complete as rapidly as possible the construction or improvement of roads within Indian reservations in California or that provide access to Indian reservations or Indian lands in California in accordance with plans that will permit the transfer of such roads to the state or local government. The Secretary is authorized to contract with the State of California or any political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the state or local government, the Secretary is authorized to convey to the state or local government rights-of-way for such roads, including any improvements thereon. A right-of-way over Indian trust or restricted land for a road heretofore constructed with the consent of the Indian owner, or a right-of-way over federally owned land that is not held for the use of any particular Indian tribe, band, or group, and is not occupied by an Indian owner or which has not been improved by an Indian owner, may be conveyed without compensation. Other rights-of-way shall be conveyed after payment by the Secretary to the Indian owner of reasonable compensation.

As used in this section, "Indian owner" includes any Indian or member of his family who holds land by allotment or assignment from the United States, by assignment from any Indian tribe, band, or group, or who has occupied such land for a period in excess of five years or who has placed improvements on the same.

SEC. 4. The Secretary is directed to cause surveys to be made of the exterior or interior boundaries of any trust or restricted Indian lands in California to the extent that such surveys are necessary or appropriate for the termination of the federal trust or the removal of federal restrictions and for the conveyance of marketable titles to the lands. Such surveys shall be completed within five years after the effective date of this act.

The Secretary is authorized to enter into a contract or contracts with the State, any political subdivision thereof, or any private corporation or agency to conduct the surveys required by this section.

SEC. 5. (a) There is hereby established a commission to be known as the California Indian Water Affairs Commission (hereinafter called the Commission) which shall be composed of two members appointed by the Secretary of the Interior, two members appointed by the Governor of California, and one member selected by the unanimous vote of the other four members. A representative chosen by the tribe, band, or group of Indians involved shall sit as a member of the Commission

while the claims of such group, or its members, are being considered. The Commission shall elect from its membership a chairman. The members of the Commissions shall receive no salary as a result of their membership on the Commission, but they may be paid for necessary expenses authorized by the Commission, including their travel and subsistence expenses while engaged in Commission activities.

(b) The function of the Commission shall be to collect and to record in the county where the land is located, and to file with the agency of the State of California vested with functions relating to adjudication of water rights, information pertaining to water use and to make findings of fact which apply to each claim of water right for each parcel of trust or restricted Indian land in California, including the recordation of all presently defined rights. The Commission shall adopt reasonable rules of procedure which may include all or part of the procedures set forth in the California Water Code with respect to fact finding in connection with the ascertainment and determination of water rights. Findings of fact made in accordance with the provisions of this subsection shall be prima facie evidence of the status of each Indian claim of water right but no action taken pursuant to this subsection shall be regarded as an adjudication of an Indian water right.

(c) The Commission is authorized, without regard to laws and procedures applicable to Federal agencies, to procure services, supplies, and property, to enter into contracts with any Federal, State, or other public or private agency or individual, to hold hearings, to take any other action necessary to carry out its function, and to incur necessary expenses in an amount not exceeding \$300,000 over a period of five years. There is authorized to be appropriated \$75,000 for the fiscal year in which the Commission begins its operations, and such amounts as may be necessary for succeeding fiscal years. An Executive Officer selected by the Commission shall pay the expenditures authorized by the Commission, keep complete records of all expenditures authorized by the Commission, keep complete records of all expenditures, and account for such expenditures in the reports of the Commission.

(d) The Commission shall submit to the Secretary of the Interior and to the Governor of California progress reports from time to time, and a final report not later than five years after the date of this Act or as soon thereafter as the accomplishment of work provided for under this section will reasonably permit. The Commission shall terminate with the submission of its final report. The Commission may include in any of its reports recommendations for further State or Federal legislation.

SEC. 6. (a) The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property in California belonging to individual Indians who die after the date of this Act.

(b) The laws of the several states, territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the property in California belonging to individual Indians who die after the date of this Act.

SEC. 7. Any owner of an interest in any tract of land in California in which any undivided interest is now or is hereafter held in trust by the United States for an Indian, or is now or is hereafter owned by an Indian subject to restrictions against alienation imposed by the United States, may commence in a state court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States.

SEC. 8. The Secretary is authorized to convey without consideration to any tribe, band, or other group of Indians in California, or a member thereof, or to a corporation or legal entity organized by such Indians, or to a public or non-profit body, any Federally owned property acquired, withdrawn, or used for the administration of Indian affairs in California and no longer needed for such purposes.

SEC. 9. (a) Each tribe, band, and other group of Indians in California for which the United States holds title to property in trust or which owns property subject to a restriction against alienation imposed by the United States, or the Secretary after consultation with such Indians, shall prepare a plan for distributing or disposing of such property by allotment thereof on an individual or family basis to the enrolled members and to any other Indians or members of their families who have occupied the land for five years or more with the expressed or tacit consent of such group, by conveyance thereof to a corporation or other legal entity organized or designated by the enrolled members and said occupants, by conveyance thereof to the enrolled members and said occupants as tenants in common, or by the sale thereof and distribution of the proceeds of sale among the enrolled members and said occupants. When preparing the allotment portion of any plan, due consideration shall be given to the nature of the use and occupancy of the land, prior assignments, the size of the Indian family, the improvements made by the Indian family, the social and economic consequences of disturbing existing occupancy patterns, and the suitability of the land for individual ownership.

(b) The Secretary, after consultation with the Indians affected, shall prepare a plan for distributing or disposing of the property held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such property is occupied by Indians or their families, by allotment thereof to individual Indians or their families, by conveyance thereof to a corporation or other legal entity organized or designated by the Indians or families who receive allotments, by conveyance thereof to the Indians or families who receive allotments as tenants in common, or by sale thereof and distribution of the proceeds of sale among the Indians or families who receive allotments. When preparing the allotment portion of any plan, the Secretary shall give due consideration to the factors named in subsection (a) of this section.

(c) Any property that is held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, and that is not occupied in part by Indians or their families, shall be sold by the Secretary and the proceeds of the sale shall be deposited in the Treasury of the United States to the credit of the account heretofore established for the Indians of California as defined in the act of May 18, 1928 (45 Stat. 602), as amended.

(d) Any plan prepared pursuant to subsections (a) or (b) of this section shall provide that all reimbursable irrigation operation, maintenance, and construction costs chargeable against the land involved or against trust or restricted property belonging to individual members of the group, and all assessments heretofore or hereafter imposed on account of such costs, shall be cancelled by the Secretary.

Any such plan shall also provide that:

(1) Specified roads, water facility, soil conservation and other improvements on tribal or other land held in trust shall be completed before the distribution or disposition of the land is completed.

(2) All trust or other restrictions on the ownership or control of land owned by individual members of the Indian group involved shall be removed.

(3) The value of any allotment at the time it is made pursuant to this section, and the value of any other allotment at the time it was made pursuant to other provisions of law, may be deducted from the shares of the allottee or his successors in interest at any time any per capita distribution is made of other assets of the tribe, band, or group.

(e) General notice shall be given of the contents of a plan that is prepared pursuant to subsection (a) of this section and that is approved by the Secretary, or a plan prepared pursuant to subsection (b) of this section, and any person affected who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments before the California Indian Appeals Board established pursuant to Section 2 of this act. After consideration of all such views and arguments, the board shall either approve the plans as submitted or recommend that the Secretary modify the same. The plan or a revision thereof shall then be submitted for the approval of the enrolled members of the tribe, band, or group, or the Indians or families who will participate in the distribution of property in the case of a plan prepared pursuant to subsection (b), and if the plan is approved a majority of such persons who vote in a referendum called for that purpose by the Secretary the plan shall be carried out.

(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall be submitted by the Secretary to the Speaker of the House of Representatives and the President of the Senate, and such plan shall be carried out unless it is disapproved by concurrent resolution of the Congress within one calendar year after such submission.

(g) Any allottee or grantee under the provisions of this section shall receive an unrestricted title to the property allotted or conveyed.

(h) Before conveying unrestricted title to property or removing trust or other restrictions on property pursuant to the provisions of

this act, the Secretary shall protect the rights of individual Indians who are minors, non compos mentis, or in need of assistance in conducting their affairs, by causing an application to be made for the appointment of guardians or conservators for such members in courts of competent jurisdiction without application from such Indians. Determination of competency and the persons to be appointed as guardians or conservators in such cases by the court shall be in accordance with legal principles applicable to all citizens of California.

(i) The Secretary is authorized to execute or to approve such conveyancing instruments or instruments removing restrictions, or to take such other action, as he deems necessary to carry out the provisions of this section.

(j) The laws of the State of California with respect to loss of water rights by nonuse shall not apply until five years after the conveyance pursuant to this act of an unrestricted title to the water right and the land to which it is appurtenant.

(k) Effective on the first day of the calendar year beginning after the conveyance of an unrestricted title to, or the removal of restrictions from, a tract of land pursuant to this act, the deferment of the assessment and collection of construction costs provided for in the first proviso of the act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a), and in the act of August 25, 1950 (64 Stat. 470), shall terminate with respect to such land, and notwithstanding any other provision of law any such land that is in the Cabazon, Augustine, or Torres-Martinez Indian Reservations may be included so far as the United States is concerned in the Coachella Valley County Water District of Riverside County, California, on the same terms and conditions that are applicable to other lands in the district.

(l) No property distributed under the provisions of this act shall at the time of distribution be subject to any federal or state income, estate, or inheritance tax. Following any distribution of property made under the provisions of this act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, state and federal, as in the case of non-Indians: Provided, that for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

SEC. 10. The Secretary is authorized to undertake a special program of education and training designed to help the members of a tribe, band, or group of Indians in California earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include property management advice, language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purpose of such program the Secretary shall enter into contracts or agreements with the California State Department of Education to administer and direct such program. Nothing in this section shall preclude any federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$500,000, to be expended by the Secretary in defraying the costs incurred by the California State Department of Education in carrying out the provisions of this section.

SEC. 11. The Secretary is authorized to enter into contracts or agreements with any appropriate State or local governmental agency to provide for the cost of care and treatment of Indians committed to mental institutions under the jurisdiction of such State or local governmental agency. Such contracts or agreements may be made with respect to care and treatment furnished prior to, as well as after, the effective date of this act.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$400,000 to be expended by the Secretary in defraying the costs incurred by him in carrying out the provisions of this section.

SEC. 12. The Secretary is authorized to enter into contracts or agreements with any appropriate state or local governmental agency to provide for the special training of sufficient personnel to provide adequate welfare services, including relief from distress, to Indians.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$50,000, to be expended by the Secretary in defraying the costs incurred in carrying out the provisions of this section.

SEC. 13. The Secretary is directed to enter into contracts or agreements with the California Department of Natural Resources to co-ordinate and plan for the gradual assumption by the Department of Forest Fire Protection and Advisory Services with respect to forest resources on lands distributed to Indians under this act.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$310,000, to be expended by the Secretary in carrying out the provisions of this section.

SEC. 14. When property within a reservation or rancheria has been distributed or disposed of in accordance with the provisions of this act, any constitution or corporate charter adopted by the Indians of such reservation or rancheria pursuant to the act of June 18, 1934 (48 Stat. 984), as amended, shall thereupon be revoked.

SEC. 15. Any allotments after the date of this act of surveyed or unsurveyed lands of the United States in the State of California that are made under the provisions of Section 4 of the act of February 8, 1887 (24 Stat. 389), or Section 4 of the act of February 28, 1891 (26 Stat. 795), as amended, or Section 31 of the act of June 25, 1910 (36 Stat. 868), or the act of March 2, 1917 (36 Stat. 969, 976), shall be evidenced by the issuance of a patent in fee instead of a trust patent. The Secretary shall cancel all trust patents evidencing allotments made under such acts prior to the date of this act and shall issue in place thereof patents in fee.

SEC. 16. There are authorized to be appropriated such sums as are necessary to complete the program authorized and directed by this act within not to exceed five years from the date of this act.

SEC. 17. The disposition of property as herein provided shall be effected notwithstanding any setoff against the claims of the Indians of

California allowed by the court of claims under the act of May 18, 1928 (45 Stat. 602), as amended.

2. REASONS FOR CHANGES INCORPORATED IN RECOMMENDED TERMINATION BILL

It will be noted that the foregoing Termination Bill which was recommended by the Senate Interim Committee on California Indian Affairs for adoption by the United States Congress differs in some material respects from the amended draft of the proposed Termination Bill which was widely circulated throughout California. (Page 33 of this report.)

The recommended bill also differs in some material respects from the proposed Termination Bill which was redrafted to meet the objections of the Department of Interior. (Page 59 of this report.)

The reasons for the alterations in the recommended bill from the text of earlier bills are set forth in a letter from the Interim Committee Counsel to the Bureau of Indian Affairs, which letter reads in full as follows:

September 20, 1957

H. REX LEE

*Associate Commissioner of Indian Affairs
Department of Interior
Interior Building, Washington, D.C.*

DEAR MR. LEE: H.R. No. 9512 and H.R. No. 9530 were introduced in the Eighty-fifth Congress at the request of Senator Charles Brown, Chairman of the California Senate Committee on Indian Affairs. This bill differs in several respects from previous drafts which have been discussed with the Bureau of Indian Affairs, and it therefore seems pertinent to furnish a brief explanation of the variances and the reasons therefor.

1. The draft of the bill which the California Senate Committee caused to be widely distributed in California provided among other things for the creation of a California Indian Appeals Board to be appointed by the Governor of California but paid with federal funds. The purpose of this board was to hear and determine appeals from the Secretary of the Interior with respect to enrollment, and it was originally suggested for the reason that it would serve as a hearing agency to interpret, and if necessary, modify standards proposed by the Department of Interior for the inclusion or exclusion of individual Indians from various tribal rolls. It was felt that by the appointment of, for example, a panel of retired judges, substantial justice could be obtained through a completely objective approach and the enforcement of uniform standards. However, the letter from the Commissioner of Indian Affairs, dated May 7, 1957, suggests as an alternative, in order to avoid federal-state conflicts, that an appeals board with similar powers be set up within the Department of Interior, but composed of persons not employed by the Bureau of Indian Affairs. The bill as submitted to the United State Congress conforms to this suggestion although we still are of the general opinion that it would be better if these appeals were handled by an entirely separate agency on the theory that the

same department should not adopt regulations and then hear appeals as to their desirability.

2. Section 3 of the latest draft provided that a right-of-way over Indian trust or restricted land that is granted with the consent of the Indian owner of the land may be conveyed to the state or county for maintenance without compensation to the owner. This provision has been deleted in the bill as introduced for the reason that it was thought that, as the road building program progresses, it would be easier to pay compensation to the Indian owner and receive a voluntary release on the land than it would be to obtain his consent without the payment of compensation. In other words, if it is provided that a right-of-way with the consent of the Indian owner would provide no compensation to him, where is the incentive to grant the consent?

3. Section 4 of the latest draft contained a provision to permit the Secretary of the Interior to enter into contracts with the state or with private individuals to conduct property surveys as contemplated by the act. You have advised that such language is not necessary because the secretary already has that power, should he desire to exercise the same. Nevertheless, the bill as introduced grants the specific power to enter into these contracts by statute. The reason for suggesting the insertion was to pinpoint the probable need of contracting out much of the survey work if any large scale termination is to be undertaken. It is suggested that, if a statewide termination program were commenced, there would not be sufficient personnel in the employment of the Department of the Interior to promptly complete all the surveys of the exterior boundaries of the reservations, or the interior of the reservations in accordance with allotments to be made, as the case may be. At this point the entire program would fail unless it were contemplated from the beginning that special appropriations would be made available to contract out some or all of this work.

4. The technical changes suggested as Items 3 and 4 of the commissioner's letter of May 7, 1957 (to subsection 5(d) and Section 7 of the draft), have been made, and the bill as introduced conforms.

5. Section 9(c) of the draft has been amended in the bill as introduced to conform to the commissioner's suggestions.

6. Subparagraph 1 of Section 9(b) of the draft required that the plan for termination prepared for the reservations or rancherias must include the completion of specified roads, water facilities and soil conservation improvements. The bill as introduced inserts the words "and other" improvements for the reason that the proposed plan for some of the reservations might include improvements other than roads, water facilities or soil conservation.

7. Section 9(e) of the draft provided that the appeals board have the power to modify the plan submitted by the department for the distribution of assets of a reservation. The commissioner has suggested that this language be amended to provide that the appeals board will have the power to recommend to the secretary that such modification of the plan be made rather than the outright power to modify. The bill as submitted to Congress contains the suggested amendment although this was done with some misgivings for the reason that a prompt, final decision in this matter is believed to be absolutely essential to successfully carry out this program and disagreements between the appeals

board and the Bureau of Indian Affairs which must be referred to the secretary for final decision could have a tendency to delay the entire matter.

8. Section 9(h) of the draft related to the requirement that the Secretary of the Interior protect the rights of individual Indians who are minors or non compos mentis. The amendments suggested by the commissioner also include the requirement that the secretary shall protect the rights of individual Indians who "in the opinion of the secretary" are "in need of assistance in conducting their affairs." The proposed amendments also provide that in addition to obtaining guardians for Indians in these categories, the secretary may protect their rights "by such other means as he may deem adequate" including the creation of private trusts or the purchase by the secretary of annuities for the Indian.

The language suggested by the commissioner was substantially changed in the bill as introduced for the reason that it appears to present almost insurmountable problems of administration, and its widespread application would delay effective termination for many years. Section 9(h) of the bill as introduced simply provides that the secretary shall protect the rights of individual Indians who are minors, non compos mentis or in need of assistance in conducting their affairs by causing an application to be made to a court of competent jurisdiction for the appointment of a guardian or conservator for the estate of such Indian. The bill as introduced provides that the determination of competency and the persons to be appointed as guardians or conservators in these cases shall be governed by the same legal principals applicable to all citizens of California.

It is believed that, if a government agency undertakes to decide in the case of each individual Indian whether or not he is capable of handling his affairs without providing a standard of competency, the whole program of termination will be subjected to the criticism that it is proceeding upon the basis of whim or caprice. Certainly, reasonable men can differ as to whether an individual Indian (or a non-Indian) is handling his affairs properly and since there are no tests which are usable, it would appear that this approach would cause endless conflict and litigation. Also, it has been estimated that four-fifths of all the Indians in California are integrated into our society and conduct their business affairs the same as other citizens, and there is little reason to believe that the remaining one-fifth cannot do so unless of course the individual is legally incompetent in the normally accepted sense of the word.

Furthermore, Section 10 of the bill provides for a three- to five-year intensive education program under the direction of the State Department of Education. This program as contemplated is especially designed for the orientation and integration of the Indian population of this State insofar as this has not already been accomplished. It therefore appears to us that it is better to concentrate on developing a program of business management and similar types of education for the Indian citizens than to try to determine whether each individual Indian is fully capable of handling his own affairs.

9. Section 9(j) of the draft has been retained even though the commissioner's letter suggests different language to correspond to the

Rancheria Bill and to the department policy. This is one of the sections wherein it is sought to protect the water rights of Indians and is a subject which should be further discussed in greater detail by water experts. However, the language suggested as department policy does not appear to us to be practical. It provides in substance that nothing in the act shall abrogate any water right that exists by virtue of the laws of the United States and then goes on to state that, regardless of termination, the laws of the State of California shall continue to be inapplicable for a period of 15 years after conveyance of the land to the Indian owner.

It is our general understanding that while the United States claims certain paramount water rights, these are not clearly defined and are the subject of some disagreement between water lawyers. Also, it seems that the extent, if any, to which these water rights of the United States are based upon Indian water rights is uncertain and thus the respective interest of the Indians and of the United States would be difficult if not impossible to determine. Furthermore, it is our understanding that there are no prescribed procedures by which the federal government can allot or assign water rights to the Indians and others so that, if an individual Indian or a group of Indians are to be granted a private ownership right to use water, this must be done under some state statute or procedure. Making provisions for the granting of this right to an Indian or a tribe would seem necessary as part of a termination program since the water rights, whatever they may be, will have to be assigned to individual parcels of land as these parcels are transferred to individual Indians or to corporations as part of the termination program.

It therefore appears to us that the language suggested by the department will merely delay a final decision as to these water rights, and it is feared that the uncertainty arising in the meantime will adversely affect Indian property values and may cause considerable litigation, all of which could do serious harm to the Indians themselves.

Section 9(h) of the bill as introduced, therefore, merely provides that the laws of the State of California as to nonuse of water will not apply until five years after the conveyance of title to the Indians. We feel a simple provision of this sort is better judgment, particularly when it is recalled that Section 5 of the bill establishes a joint State-Federal Indian Water Affairs Commission which is charged with the responsibility of reviewing and making recommendations upon all Indian water rights in this State. Following such recommendations, appropriate state and federal legislation can be passed to effectively dispose of the problems.

10. The draft provided for a mandatory provision that the special educational program for Indians be carried out through the California State Department of Education and provided a \$500,000 appropriation therefor. The commissioner suggests that this mandatory direction and appropriation be omitted from the bill and that instead broad authority be given to the secretary to further administer the program if he chooses to do so. The bill as introduced, however, retains the language of the draft to provide not only for the special appropriation but also for the mandatory direction of this program through the State Department of Education. The reason for this is as follows: The whole

process of termination requires a severance of the relationship between reservation Indians and the Bureau of Indian Affairs. We feel that just so long as this relationship continues, regardless of the special programs undertaken by the bureau, no effective steps will have been taken toward eventual termination. Effective termination also means in our view that the one-fifth of the Indian population of this State still living on trust lands should be completely integrated into the political subdivisions of this State in the same manner as non-Indians. We feel that one of the best ways to accomplish this result is for the State Department of Education to be in full charge of the orientation program, and, if in the course of this program, deficiencies are discovered in local educational systems which need to be corrected to assist the reservation Indians, the State Department of Education is in the best position to do this as a matter of normal routine.

The inclusion of the special appropriation was inserted in the bill for the following reason which applies also to all other items of appropriation specified in the bill:

It was felt that Congress would like to consider with the bill the special items of cost provided therein. These items were therefore placed within the section to which they applied so that, as various witnesses discuss each section, special attention will be called to the cost, and the witness can point out not only the reason for the item but present a budget for the proposed use of the funds. Thereafter, if the inclusion of these appropriations within the bill is not consistent with federal policy, the bill can be amended to delete them and to make alternate provisions in some other manner as required by the rules of Congress.

11. Sections 11, 12 and 13 of the draft have been placed in the bill as introduced. These three sections provide appropriations by the federal government to be paid to state agencies to aid in the transition period of the termination program.

For example, Section 11 of the bill provides an appropriation of \$400,000 to defray the cost of treatment of Indians in mental institutions in this State for a five-year period during which it would be expected the termination would probably be completed. The reason for this request is that under the laws of the State of California, citizens of this State, who are treated in mental institutions and who have land or other assets, are required to partially compensate the State for the cost of their care. However, trust and restricted Indian lands are not subject to these liens and therefore the State is requesting reimbursement from the federal government for the care of these Indians.

Section 12 provides a special appropriation to be paid to the state agency concerned with social welfare for special training of personnel to assist in the termination program. The laws of California do not differentiate between Indian and non-Indian citizens, and therefore an Indian citizen is as entitled to aid as any other citizen of this State. However, it has been said that there are special problems incident to explaining the state and local welfare program to Indians in some areas and the Department of Social Welfare therefore has requested this appropriation so that special attention may be given to training in this regard.

Section 13 of the bill provides an appropriation of \$300,000 for the use of the California Department of Natural Resources to cover the increased personnel and other expenses which that department will have during the transition period while planning for termination. It is felt that in some of the Indian reservations and rancherias there will be need for state aid in matters such as timber management as the federal government relinquishes its responsibility over these Indian timberlands. The purpose of the appropriation is to provide extra state personnel to work with federal agencies and Indians involved so that the State's services in these fields may effectively aid in the operation of the property when federal supervision has been terminated.

The commissioner has suggested that since the federal government has already withdrawn from subventions in California in the fields of mental health and social welfare that it would be inconsistent to provide the appropriations requested in Sections 11 and 12 of the act. However, the provisions were placed in the bill for the consideration of Congress on the theory that although the federal government may have withdrawn the benefits of subventions in these fields, the burden of providing these services remains and has been assumed by the State of California. In spite of the assumption of these responsibilities by the State, the lands which normally contribute to our tax base have been kept from the tax rolls by remaining in federal ownership and therefore it seems only fair that until this situation is corrected, subventions be provided, particularly when they will aid in the termination process.

12. Sections 14 and 15 of the draft provided respectively for a \$1,000,000 appropriation for noninterest-bearing loans to Indians for education in recognized vocational schools and a \$1,000,000 revolving fund to make noninterest-bearing loans to Indians and Indian groups for promoting economic development of properties and persons affected by this act.

The commissioner has suggested that this type of an appropriation is inconsistent with the termination process, and these provisions have been omitted from the bill as introduced.

Special appropriations for tuition and economic loans to Indians have been omitted from the bill for several additional reasons. As desirable as such loans may be, it is felt that suggestions of this nature should more fittingly come from either the Indians themselves or as part of some national program such as that provided by Public Law 959, Eighty-fourth Congress, Second Session. In other words, it was felt that economic and tuition loans for Indians should not necessarily be limited to Indians who have an interest in trust land in California and thus need not be considered as part of the termination of federal supervision over these lands.

The subject of special congressional consideration to Indians other than that involving trust lands also appears to be related to the question of various claims which have been filed by the Indians of California, and in this connection, it has been suggested that moneys remaining in the judgment fund now being held for the Indians of California could well be distributed to a nonprofit educational foundation for use as scholarships and other educational loans for the benefit

of all of the Indians of this State as distinguished from the relatively few who have interests in trust lands. This suggestion appears to have merit and perhaps should be the subject of separate legislation. We do not believe, however, that the field should be covered in the bill which is now being presented for general statewide termination of federal supervision over trust lands.

Section 17 of the draft has been amended in accordance with the suggestions of the commissioner.

Some of the foregoing comments represent a divergence between the views of the California Senate committee and those of the Department of Interior. However, the disagreements are not meant to be in the spirit of criticism but rather in the form of suggestions as to how a better bill can be worked out for the benefit of the Indians themselves. In addition, the members of the California Senate committee have asked me to express again their appreciation for the co-operation received from the department and for the countless hours which the representatives of the Bureau of Indian Affairs have spent in discussing the technical aspects of the distribution of trust lands in California with representatives of the State.

Yours very truly,

JOHN A. BOHN

FEDERAL TERMINATION BILLS CONSIDERED

As outlined in the predecessor reports the committee drafted a bill which it felt would provide for the orderly and equitable termination of Federal control over California Indians. In drafting and re-drafting the bill the committee relied not only on the information it had garnered through its own investigation and hearings but also upon the recommendations made by all responsible interested persons, agencies, and Governmental departments that it was possible to consult. The end result was introduced in the 85th Congress at the request of Senator Charles Brown, Chairman of the California Senate Committee on Indian Affairs, and was thereby designated H. R. 9512 and H. R. 9530. The bill, in its then final form, and a general explanation of the bill prepared by John A. Bohn, Counsel for the California Senate Interim Committee on California Indian Affairs is hereinafter set forth in full.

Before setting forth H. R. 9512 and H. R. 9530 along with the "general explanation" referred to above, the reader should be reminded at this point that it is the committee's feeling that it would be presumptuous for the California Legislature to recommend to Congress the desirability of such Federal termination. However, if Congress decides to so terminate the Federal supervision of California Indian affairs, as it has indicated it will, then the Committee feels that it is in a position to recommend a bill which will most equitably carry out the declared intention of Congress.

H. R. 9512 (H. R. 9530 is identical), as introduced in the 85th Congress, reads as follows:

85th CONGRESS

1st SESSION

H.R. 9512

IN THE HOUSE OF REPRESENTATIVES

AUGUST 28, 1957

MR. UTT introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide for certain preliminary actions that need to be taken before Federal supervision over Indian affairs in California can be terminated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the membership of each tribe, band, or other group of Indians in California for which the United States holds title to property in trust, or which owns property subject to restriction against alienation imposed by the United States, shall be closed as of midnight of the date of the enactment of this Act, and no child born thereafter shall be eligible for membership. A membership roll for each such group shall be prepared in accordance

with regulations governing procedures, time limitations, and eligibility requirements prescribed by the Secretary of the Interior (hereafter called the Secretary), after consultation with the Indians affected, notwithstanding the eligibility requirements prescribed in any tribal constitution or other provision of law. General notice of proposed regulations shall be given and interested persons shall be afforded an opportunity to present their views and arguments to the Secretary before the regulations are issued. The procedures included in such regulations shall provide for the publication in the Federal Register of a proposed roll of the members of the group who are living at midnight on the date of this Act, and for the right to file an appeal with the California Indian Appeals Board, appointed pursuant to section 2 of this Act, contesting the inclusion or omission of the name of any person on or from such roll. The California Indian Appeals Board shall review such appeals, giving due consideration to the recommendations given and evidence adduced, and the decision of the board thereon shall be final and conclusive. Before making a decision the board may recommend that the Secretary modify the eligibility requirements previously established. After disposition of all such appeals, the roll shall be published in the Federal Register and shall be final. The provisions of this section shall create no individual property rights in the property of such groups.

SEC. 2. The Secretary shall establish a board to be known as the California Indian Appeals Board which shall be composed of three employees within the Department of the Interior who are not in the Bureau of Indian Affairs.

SEC. 3. The Secretary is directed, within the limits of available appropriations, to complete as rapidly as possible the construction or improvement of roads within Indian reservations in California or that provide access to Indian reservations or Indian lands in California in accordance with plans that will permit the transfer of such roads to the State or local government. The Secretary is authorized to contract with the State of California or any political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government, the Secretary is authorized to convey to the State or local government rights-of-way for such roads, including any improvements thereon.

SEC. 4. The Secretary is directed to cause surveys to be made of the exterior or interior boundaries of any trust or restricted Indian lands in California to the extent that such surveys are necessary or appropriate for the termination of the Federal trust or the removal of Federal restrictions and for the conveyance of marketable titles to the lands. Such surveys shall be completed within five years after the effective date of this Act, or as soon thereafter as possible.

The Secretary is authorized to enter into a contract or contracts with the State, any political subdivision thereof, or any private corporation or agency to conduct the surveys required by this section.

SEC. 5. (a) There is hereby established a commission to be known as the California Indian Water Affairs Commission (hereinafter called the Commission) which shall be composed of two members appointed by the Secretary of the Interior, two members appointed by the Gov-

ernor of California, and one member selected by the unanimous vote of the other four members. A representative chosen by the tribe, band, or group of Indians involved shall sit as a member of the Commission while the claims of such group, or its members, are being considered. The Commission shall elect from its membership a chairman. The members of the Commission shall receive no salary as a result of their membership on the Commission, but they may be paid for necessary expenses authorized by the Commission, including their travel and subsistence expenses while engaged in Commission activities.

(b) The function of the Commission shall be to collect and to record in the county where the land is located, and to file with the agency of the State of California vested with functions relating to adjudication of water rights, information pertaining to water use and to make findings of fact which apply to each claim of water right for each parcel of trust or restricted Indian land in California, including the recordation of all presently defined rights. The Commission shall adopt reasonable rules of procedure which may include all or part of the procedures set forth in the California Water Code with respect to factfinding in connection with the ascertainment and determination of water rights. Findings of fact made in accordance with the provisions of this subsection shall be prima facie evidence of the status of each Indian claim of water right but no action taken pursuant to this subsection shall be regarded as an adjudication of an Indian water right.

(c) The Commission is authorized, without regard to laws and procedures applicable to Federal agencies, to procure services, supplies, and property, to enter into contracts with any Federal, State, or other public or private agency or individual, to hold hearings, to take any other action necessary to carry out its functions, and to incur necessary expenses in an amount not exceeding \$300,000 over a period of five years. There is authorized to be appropriated \$75,000 for the fiscal year in which the Commission begins its operations, and such amounts as may be necessary for succeeding fiscal years. An Executive Officer selected by the Commission shall pay the expenditures authorized by the Commission, keep complete records of all expenditures, and account for such expenditures in the reports of the Commission.

(d) The Commission shall submit to the Secretary of the Interior and to the Governor of California progress reports from time to time, and a final report not later than five years after the date of this Act or as soon thereafter as the accomplishment of work provided for under this section will reasonably permit. The Commission shall terminate with the submission of its final report. The Commission may include in any of its reports recommendations for further State or Federal legislation.

(e) Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law. During the time such State law is

not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

SEC. 6. (a) The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property in California belonging to individual Indians who die after the date of this Act.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the property in California belonging to individual Indians who die after the date of this Act. The United States shall not be a necessary or indispensable party to any proceedings under such laws, and a final judgment of a court in such proceedings shall bind the United States with respect to the trust or restricted property involved.

SEC. 7. Any owner of an interest in any tract of land in California in which any undivided interest is now or is hereafter held in trust by the United States for an Indian, or is now or is hereafter owned by an Indian subject to restrictions against alienation imposed by the United States, may commence in a State court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States.

SEC. 8. The Secretary is authorized to convey without consideration to any tribe, band, or other group of Indians in California, or a member thereof, or to a corporation or legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property acquired, withdrawn, or used for the administration of Indian affairs in California and no longer needed for such purposes.

SEC. 9. (a) Each tribe, band, and other group of Indians in California for which the United States holds title to property in trust or which owns property subject to a restriction against alienation imposed by the United States, or the Secretary after consultation with such Indians, shall prepare a plan for distributing or disposing of such property by allotment thereof on an individual or family basis to the enrolled members and to any other Indians or members of their families who have occupied the land for five years or more with the expressed or tacit consent of such group, by conveyance thereof to a corporation or other legal entity organized or designated by the enrolled members and said occupants, by conveyance thereof to the enrolled members and said occupants as tenants in common, or by the sale thereof and distribution of the proceeds of sale among the enrolled members and said occupants. When preparing the allotment portion of any plan, due consideration shall be given to the nature of the use

and occupancy of the land, prior assignments, the size of the Indian family and the ages of its members, the improvements made by the Indian family, the social and economic consequences of disturbing existing occupancy patterns, and the suitability of the land for individual ownership.

(b) The Secretary, after consultation with the Indians affected, shall prepare a plan for distributing or disposing of the property held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such property is occupied by Indians or their families, by allotment thereof to individual Indians or their families, by conveyance thereof to a corporation or other legal entity organized or designated by the Indians or families who receive allotments, by conveyance thereof to the Indians or families who receive allotments as tenants in common, or by sale thereof and distribution of the proceeds of sale among the Indians or families who receive allotments. When preparing the allotment portion of any plan, the Secretary shall give due consideration to the factors named in subsection (a) of this section.

(c) Any property that is held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, and that is not occupied in part by Indians or their families, shall be sold by the Secretary and the proceeds of the sale shall be deposited in the Treasury of the United States to the credit of the account heretofore established for the Indians of California as defined in the Act of May 18, 1928 (45 Stat. 602), as amended.

(d) Any plan prepared pursuant to subsection (a) or (b) of this section shall provide that all reimbursable irrigation operation, maintenance, and construction costs chargeable against the land involved or against trust or restricted property belonging to individual members of the group, and all assessments heretofore or hereafter imposed on account of such costs, shall be canceled by the Secretary.

Any such plan shall also provide that:

(1) Specified roads, water facility, soil conservation and other improvements on tribal or other land held in trust shall be completed before the distribution or disposition of the land is completed.

(2) All trust or other restrictions on the ownership or control of land owned by individual members of the Indian group involved shall be removed.

(3) The value of any allotment at the time it is made pursuant to this section, and the value of any other allotment at the time it was made pursuant to other provisions of law, may be deducted from the shares of the allottee or his successors in interest at any time any per capita distribution is made of other assets of the tribe, band, or group.

(e) General notice shall be given of the contents of a plan that is prepared pursuant to subsection (a) of this section and that is approved by the Secretary, or a plan prepared pursuant to subsection (b) of this section, and any person affected who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments before the California Indian Appeals Board established pursuant to section 2 of this Act.

After consideration of all such views and arguments, the board shall either approve the plan as submitted or recommend that the Secretary modify the same. The plan or a revision thereof shall then be submitted for the approval of the enrolled members of the tribe, band, or group, [or] the persons qualified under State law to represent them in the case of minor and incompetent members, or the Indians or families who will participate in the distribution of property in the case of a plan prepared pursuant to subsection (b), and if the plan is approved by a majority of such persons who vote in a referendum called for that purpose by the Secretary, the plan shall be carried out.

(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall be submitted by the Secretary to the Speaker of the House of Representatives and the President of the Senate, and such plan shall be carried out unless it is disapproved by concurrent resolution of the Congress within one calendar year after such submission.

(g) Any allottee or grantee under the provisions of this section shall receive an unrestricted title to the property allotted or conveyed.

(h) Prior to the transfer of title to, or the removal of restrictions from, property in accordance with the provisions of this Act, the Secretary shall protect the rights of Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from the Indians, including but not limited to the creation of a trust of such Indian's property with a trustee selected by the Secretary, or the purchase by the Secretary of an annuity for such Indian: *Provided, however,* That no Indian shall be declared to be in need of assistance in conducting his affairs unless the Secretary determines that he does not have sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income and proceeds therefrom, with such reasonable degrees of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof: *Provided, further,* That any Indian determined by the Secretary to be in need of assistance in conducting his affairs may, within 120 days after receipt of written notice of such secretarial determination, contest the secretarial determination in any naturalization court for the area in which said Indian resides by filing therein a petition having that purpose and by mailing by registered mail to the United States Attorney for the district in which the action is brought and to the Attorney General of the United States and to the Area Director of the Bureau of Indian Affairs in Sacramento, California, copies of the process of the court with copies of the petition; the burden shall thereupon devolve upon the Secretary to show cause, at a time and place to be set by the court, but not less than 60 days after filing and mailing the petition, why such Indian should not conduct his own affairs, and the decision of such court shall be final and conclusive with respect to the affected Indian's conduct of his affairs.

(i) The Secretary is authorized to execute or to approve such conveying instruments or instruments removing restrictions, or to take

such other action, as he deems necessary to carry out the provisions of this section.

(j) Effective on the first day of the calendar year beginning after the conveyance of an unrestricted title to, or the removal of restrictions from, a tract of land pursuant to this Act, the deferment of the assessment and collection of construction costs provided for in the first proviso of the Act of July 1, 1932 (47 Stat. 564; 25 U. S. C. 368a), and in the Act of August 25, 1950 (64 Stat. 470), shall terminate with respect to such land, and notwithstanding any other provision of law any such land that is in the Cabazon, Augustine, or Torres-Martinez Indian Reservations may be included so far as the United States is concerned in the Coachella Valley County Water District of Riverside County, California, on the same terms and conditions that are applicable to other lands in the district.

(k) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income, estate, or inheritance tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

SEC. 10. There is hereby authorized to be appropriated for transfer to and expenditure by the State of California the sum of \$500,000 for carrying out special programs needed to help Indians in California who are now living on trust or restricted land to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include any special projects or instructions needed by individuals or groups, including property management advice, orientation in non-Indian community customs and living standards, acceleration of earning skills, and improvement of health and sanitation conditions.

SEC. 14. When property within a reservation or rancharia has been distributed or disposed of in accordance with the provisions of this Act, any constitution or corporate charter adopted by the Indians of such reservation or rancharia pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, or pursuant to any other authority, shall thereupon be revoked by operation of law. The Secretary shall help the members of any tribe to organize under state law any form of organization they wish to establish for the purpose of preserving their Indian and social identity.

SEC. 15. Any allotments after the date of this Act of surveyed or unsurveyed lands of the United States in the State of California that are made under the provisions of section 4 of the Act of February 8, 1887 (24 Stat. 389), or section 4 of the Act of February 28, 1891 (26 Stat. 795), as amended, or section 31 of the Act of June 25, 1910 (36 Stat. 868), or the Act of March 2, 1917 (36 Stat. 969, 976), shall be evidenced by the issuance of a patent in fee instead of a trust patent. The Secretary shall cancel all trust patents evidencing allotments made

under such Acts prior to the date of this Act and shall issue in place thereof patents in fee.

SEC. 16. There are authorized to be appropriated such sums as are necessary to complete the program authorized and directed by this Act within not to exceed five years from the date of this Act, or as soon thereafter as possible.

SEC. 17. The disposition of property as herein provided shall be effected notwithstanding any setoff against the claims of the Indians of California allowed by the court of claims under the Act of May 18, 1928 (45 Stat. 602), as amended.

GENERAL EXPLANATION

By John A. Bohn, Counsel and Executive Secretary, California Interim Committee on California Indian Affairs. (For Department of the Interior comment see letter of March 6, 1959 from Roger Ernst, Assistant Secretary, reprinted elsewhere in this report.)

H.R. 9512

GENERAL EXPLANATION

(Respecting Termination of Federal Supervision Over California Indians)

The following explanation of the general intent and effect of H.R. 9512 is presented for the purpose of outlining in nontechnical language the provisions of the bill and results to be anticipated from its passage.

The bill does not terminate federal supervision over California Indians now or at any fixed time in the future. Rather it provides the mechanics by which the Bureau of Indian Affairs in consultation with the Indians involved can develop over the years a program of termination as to each of the reservations or rancherias in California. It is expected that a different plan will have to be provided for each of the properties since their problems differ, but general procedures are outlined setting the pattern within which individual termination programs can be accomplished as the needs of each of the properties require. It is the intent of the bill also that the affected Indians vote upon any plan presented for an individual rancheria or reservation and such plan becomes effective upon a majority approval of the Indians voting. However, if the plan is not approved by a majority of such Indians, the fact of such nonagreement is reported to Congress and the plan will be carried out unless it is disapproved by Congress by concurrent resolution adopted within one calendar year after submission.

The following is a brief discussion of each section of the bill and the results it is intended to accomplish.

SECTION 1

This section deals with the so-called "tribal" membership "roll". Under federal theory, as each child is born it becomes a member of the tribe, band or group involved and is as equally entitled to share in the property rights of such tribe, band or group as all other members. Death of a member automatically forfeits his rights to tribal property which are normally not inheritable. The fact that one family may have seven or eight children and another family have none makes no difference, and this whole concept has added immeasurably to the confusion regarding Indian property rights in this State. It, therefore, appears clear that in any termination program the "roll" has to be closed which would mean that persons born after a given date would no longer be considered "members" for purposes of determining property rights. This section "closes" the roll and also re-

quires that a membership roll be prepared which would in effect constitute a list of persons to be considered in the distribution of the particular property in which the group had an interest. The bill does not set forth the details as to how eligibility for this roll is to be determined, leaving this for later adoption in the form of rules and regulations to be issued by the Secretary of the Interior. Considerable thought was given in an attempt to spell out eligibility requirements in the bill, but it appeared that different tests might have to be used in the various reservations because of the diversity of problems throughout the State.

Any Indian who is not included in the final roll of members adopted by the Secretary of Interior, or who otherwise feels he has been unfairly treated, has the right to appeal to a special board called the California Indian Appeals Board, which is given the authority to review and consider all appeals on this subject for two purposes: (1) If the appeal raises the question that an individual Indian was entitled to inclusion in the final roll under the regulations of the secretary but was not so included, the appeals board has the right of making a final decision to include or exclude this Indian from the roll. (2) If the appeal is on the grounds that the eligibility requirements adopted by the secretary are themselves discriminatory and should be revised so that the appealing Indian and others falling within the same class would be included, the board is given the power to make a recommendation to the secretary that the eligibility requirements be modified to cover the situation. The secretary is not required to follow the recommendations of the board changing the eligibility requirements, but it is expected that in the normal instance he would do so.

It should be noted that this section of the bill is only applicable to reservations which are held by the United States for the benefit of a designated tribe, band or group of Indians. It is thus distinguishable from the other class of reservations where the land was acquired for the benefit of "landless Indians" which is separately treated elsewhere in the bill. The provisions of this section likewise do not apply to land which has been allotted to an Indian or Indians, and the subject of allotted land is separately treated in Section 15 of the bill.

SECTION 2

This section provides for the creation of the California Indian Appeals Board briefly referred to in the explanation to Section 1. This board is to be appointed by the Secretary of Interior and shall be composed of three employees within the department who are not in the Bureau of Indian Affairs. The bill does not so specify, but it is expected that the membership of this appeals board will primarily be composed of attorneys in the solicitor's office who are not attached to or work for the Bureau of Indian Affairs.

SECTION 3

Section 3 is intended to require the Department of the Interior to complete the construction and improvement of roads within or giving access to Indian reservations in accordance with county standards of road construction. Thereafter, the bill contemplates that these roads

be transferred to and accepted for maintenance by the county and become part of the county road system.

The Department of the Interior has already undertaken such a program, but this section is designed to accelerate it by specifically authorizing contracts with state and county agencies for construction as a substitute for the somewhat cumbersome procedures now in use.

This section also makes provision for the transfer of rights of way to the counties or State, as required, depending upon the nature of the roadways and provides for compensation under some circumstances to Indian owners for lands taken for right-of-way purposes.

SECTION 4

This section is intended to require the Department of the Interior to provide exterior and interior surveys and boundaries of Indian reservations or rancherias where accurate surveys do not now exist or where for any other reason new surveys are necessary to clearly establish the boundaries of the lands to be considered. It is intended that the direction given to the secretary by this section also includes the responsibility of providing surveys of individual plots or parcels which may be transferred to individual Indian owners as a result of the acceptance of a plan to distribute tribal properties or to transfer fee title in existing allotted or assigned properties.

SECTION 5

This section provides for the creation of a special commission to be known as the California Indian Water Rights Commission. It will consist of two members appointed by the Secretary of Interior, two members appointed by the Governor of California and a fifth to be selected by unanimous vote of the other four. In addition, a representative to be chosen by the tribe, band or group of Indians involved shall sit as a member of the commission while the claims of such group or its members are being considered.

The purpose of the creation of this commission is to provide technical help in establishing permanent water rights applicable to Indian lands in California. At the present time where the United States claims a paramount water right, it is not clear as to what portion of said water right it is claiming for the benefit of affected Indians and what portion, if any, it is claiming under its sovereign powers. Further, it does not appear that there is any federal machinery for the segregation of such water rights and granting them or portions of them to affected Indians.

The problem becomes even more complicated when it is considered that as part of the termination process, the Indians in particular reservations or rancherias may choose to distribute tribal properties not all of which would be located in equal proportions along the bank of a stream, yet if distribution of the lands is to be handled in a fair manner, there will also be required an assignment of water rights not only to the entire land involved but to the holders of individual parcels after distribution takes place.

The purpose of the commission, therefore, is to examine the water problem with regard to each piece of trust property in California and to make recommendations for an equitable use and distribution of the

water to the Indians. It is further contemplated that to make such rights permanent, special state legislation will be necessary to cover the situation in view of the fact that the problems presented by these Indian lands are unique and do not readily fit into existing state patterns governing water use and distribution.

The bill provides that the findings of the commission, which must be completed within five years of the effective date of the act shall be prima facie evidence of the existence of such right but shall not be regarded as an adjudication.

SECTION 6

The purpose of Section 6 is to provide that as to Indians dying after the effective date of the act, their interests in property held for them in trust by the United States Government shall be determined and distributed in accordance with the laws of the State of California. Under present practice, the Bureau of Indian Affairs maintains a probate procedure of its own for the inheritance and distribution of lands held in trust by the United States Government for the benefit of the decedent. Thus, where an Indian dies having an interest in trust property and also owning nontrust property, such as a bank account, automobile, etc., that portion of his property not subject to federal supervision is distributed in accordance with the laws of the State of California and the trust property is distributed under the rules of the Bureau of Indian Affairs. Although it appears that the rules of the Bureau of Indian Affairs parallel the state statutes in most respects, the entire procedure is cumbersome and unsatisfactory.

SECTION 7

Section 7 is designed to authorize a partition action involving trust properties. It is primarily designed to cover a situation where a given parcel of land is partially held in trust by the United States Government and is partially in private ownership. This section would authorize an action in partition by the private owners and upon the entry of the judgment for partition or sale, the federal trust would terminate on the portion now subject to the trust and the matter would be handled as in the case of any other partition under existing state law.

SECTION 8

This section is designed to authorize the federal government to give federally-owned property to tribes, bands or groups of Indians or individuals without consideration. It is deemed necessary to permit transfers of federally-owned buildings, water systems, etc., on reservations which would no longer be needed for federal purposes when the bill becomes effective.

SECTION 9

This is the general section providing for the mechanics of property distribution. In reviewing the various subsections it is again necessary to distinguish between the two basic types of trust properties within the State. In the case of some reservations the land is held by the United States in trust for a named tribe, band or group of Indians, whereas in the case of other reservations or rancherias the property

was specifically acquired by the United States for the use of "landless Indians." In the case of the former, some recognition perforce must be given to tribal membership, whereas in the case of the latter, occupancy and usage seems to present the basic pattern for distribution. It should further be noted, however, when dealing with reservations falling into the "landless Indian" category, in some instances "tribal" councils or groups have been organized which have some influence upon the Indian affairs conducted upon this land and the problem becomes further complicated when it is recognized that the Bureau of Indian Affairs and others have dealt with this type of "tribal" council in a manner similar to tribal councils governing land acquired for a particular tribe, without regard to the specialized status of this particular land.

Subsection (a) places the responsibility on the tribe or on the Secretary of the Interior to prepare a plan for distributing property in those reservations held by the United States Government for the benefit of the particular tribe.

Subsection (b) places the responsibility on the Secretary to prepare a plan similar to that referred to in subsection (a) for the distribution of land held by the United States for the benefits of "landless Indians," as distinguished from the type of land referred to in subsection (a).

Subsection (c) simply provides that property held by the United States Government for "landless Indians" which has not been occupied must be sold and the proceeds deposited in the Treasury for the account of the "Indians of California." It is not intended that this section require the sale of unused land which is part of a tract now occupied or used by Indians. Rather, it is the intent of this section to require the sale of several tracts of land which are wholly unoccupied and wholly unused by Indians even though held by the federal government in trust for the "landless Indians" of California. The primary purpose for requiring the sale of this property is that no other alternative seems practical. Consideration was given to whether these several parcels should not now be made available for use of "landless Indians" but the tentative conclusion was reached that no fair way appeared to distinguish which of the many "landless Indians" of California should be permitted to occupy the same and accordingly a sale was determined as the fairest conclusion.

Subsection (d) specifies the various matters which must be included in any plan prepared either by the Indians or by the Department of Interior for the distribution of Indian lands. It is intended to require by statute the accomplishment of certain objectives before any such plan can become effective. For example: (1) The section provides that all liens now existing against Indian lands must be cancelled. (2) Roads, water facilities, etc., must be completed before distribution of the land. (3) All restrictions on the ownership or control of land held by individual members of the Indian group involved shall be removed. (4) The value of existing and prior allotments to individual members of the Indian group may be deducted from the shares of the allottee at the time of distribution of other assets of the tribe or group.

Subsection (e) provides for notice of the proposed distribution plan and opportunity to object thereto. It also provides for submission of

the plan to the affected Indians and upon their approval its being carried out. Provision is made for any person affected who feels that he has been unfairly treated in the proposed distribution of property to present his views and claims before the California Indian Appeals Board and after consideration of such arguments the board may either approve the plan as submitted or recommend that the Secretary modify the same.

Subsection (f) provides that where the Indians do not approve a particular plan, it is submitted to the United States Congress and becomes effective within one year unless changed by Congress.

Subsection (g) merely provides for an unrestricted title being granted to the Indians in carrying out the details of any approved plan of distribution.

Subsection (h) provides that the Secretary is authorized to apply in courts of competent jurisdiction in California for guardianship proceedings to protect the rights of minors and incompetents. In this section of the bill, it is provided that the test of competency shall be the same test as that applicable to all citizens of California. This principle differs from that now currently in use by the Bureau of Indian Affairs in that the present test of competency seems to involve a determination by the Department of Interior as to whether an Indian is "competent" in the sense that he possesses sufficient education and training to effectively handle his affairs without guidance from the Government of the United States. This latter concept was purposely discarded in the preparation of this section for the reason that it was believed impossible either by statute or administrative decision to determine whether any person possesses that degree of judgment and skill necessary to protect his own property rights. In reaching this conclusion, the committee noted that at least four-fifths of all the Indians in California have been assuming this responsibility for generations and further found no reason why the remaining one-fifth would not also be sufficiently capable of doing so.

Subsections (i), (j), (k), and (l) of Section 9 of the bill do not seem to require special explanation with the exception of subsection (j) and (l).

Subsection (j) provides that the laws of California as to loss of water rights by nonuse will not apply until five years after the distribution of the land and water right to the Indian. This was placed in the bill to give the Indian a reasonable time to develop his property and the use of water thereon after it was distributed to him. This section would also have to be supplemented by special State legislation and possibly revised either by the extension of the time or otherwise, depending upon the findings and recommendations of the California Indian Water Affairs Commission.

Subsection (l) is worthy of special note, which provides in substance that the distribution of this property to the Indians shall not subject the Indian to any Federal or State income, estate or inheritance tax.

SECTION 10

Section 10 is intended to provide a comprehensive, special educational program designed to help the members of tribes, bands or groups of Indians in California to conduct their own affairs, earn a

livelihood and assume their full responsibility as citizens without special consideration because of their status as Indians. At the present time, of course, under California law, all Indians in California, regardless of whether they have any connection with Federal trust properties, have the same legal rights and responsibilities as any other citizen of California. However, the contention has been made that Indians living on reservations or rancherias, having received special protection from the Federal Government as to their land ownership, are not yet ready to assume the responsibility of handling property to be distributed to them under any termination plan. Whether or not this contention is correct, the purpose of this section of the bill is to give to the Department of Education of the State of California the responsibility of conducting a state-wide special program to remove any doubt on the subject. The State Department of Education was chosen as the agency to perform this service for the reason that it was felt that the State Department of Education is in the best position to integrate this program with local school districts and to generally correlate the activities of all of the school districts toward a common goal. It has been suggested that this special educational program should be supplemented by a state directed program providing for the orientation of Indians living on reservations and rancherias with the local non-Indian community life. Such a program is not provided by this bill but may be later considered by the State Government.

SECTIONS 11, 12 AND 13

These three sections are generally intended to provide correlation between the agencies of the State of California and those of the Federal Government during the transition period preceding eventual termination and distribution of Indian properties. Special appropriations are made to reimburse the State of California for extra costs during this period.

SECTION 14

Section 14 is intended to revoke charters given to various Indian tribes in connection with the so-called Indian Reorganization Act. These charters sought to authorize constitutions, by-laws, etc., for Indian tribes desiring to be self-governing, and several of the tribes elected to come under the provisions of the Act. Of course, if Federal trusteeship is terminated, it would appear that such charters would have no place in the California law.

SECTION 15

Section 15 is intended to convert all present or future allotments into fee patents, thereby in effect providing an unrestricted title to the Indian of property now held in allotment status. Allotted property now is inheritable but the Indian "owner" cannot dispose of the same without special permission of the Secretary of Interior. This section of the bill would remove that restriction on his "ownership".

SECTION 16

Section 16 authorizes the necessary appropriation over the years to accomplish the results intended by the bill.

SECTION 17

This section is intended to make certain that the termination and distribution program provided by this bill would be carried out without any setoff arising from Indian claims litigation. Some time ago Congress granted authority for claims to be processed on behalf of the "Indians of California" for various grievances and from the judgment thus obtained there was deducted a sum of money for services rendered by the United States Government to the Indians for facilities provided for them. The value of the lands now constituting the reservations and rancherias in California was deducted from this judgment fund and so the claim has been made that these lands, having been paid for by all of the Indians of California, belong to all of the Indians of California, rather than to particular tribes, bands, groups or occupants. However, regardless of the merits of this contention, complete chaos would undoubtedly result if the individual occupants or tribes utilizing these special reservations or rancherias were dispossessed, and special provision therefore must be made in federal legislation to either negate the contention above expressed or provide additional funds to all of the Indians of California to compensate them for the value of these specific properties. It is believed that the former course is the most desirable and the bill so provides.

CONCLUSION

H.R. 9512 is intended to provide the maximum protection and safeguards to the Indians of California who have an interest in trust lands. As indicated in the introduction, the bill does not provide for immediate termination of federal supervision over these lands, but rather the mechanics for a gradual termination as fair and equitable plans can be developed to meet the needs of each of the individual rancherias and reservations.

III

WATER RIGHTS PROBLEMS

When H.R. 9512, as introduced in Congress, was disseminated with requests for comments it soon became apparent that a major concern centered around the sections on the bill relating to water rights. These sections, 5 and 9(J) became the subject of a good deal of correspondence and many conferences, with this committee's counsel, the California State Water Rights Board, the California State Department of Water Resources, and the Department of Interior participating. The questions raised, the analysis of these problems, and the proposed revisions to correct the problems can best be reported here by setting forth excerpts from letters exchanged between the above mentioned interested persons and agencies.

Section 5, briefly, as originally written establishes a commission to be known as the California Indian Water Affairs Commission. The function of this commission is to investigate and make factual findings pertaining to water use and water rights for each parcel of federally controlled Indian land in California. Section 9(J) purports to postpone by five years the laws of the State of California that apply to the loss of water rights because of nonuse. The basic problems are clearly pointed out in a letter, dated April 1, 1958, from Gavin Craig, principal attorney for the State Water Rights Board. In the letter to the committee, Mr. Craig makes reference to an earlier letter discussing the subject matter written by California Assistant Attorney General Howland. In this letter Mr. Craig said: "On page 1 (of Mr. Howland's letter) reference is made to Section 5(B) of H.R. 9512, which provides that findings of fact by the commission shall be *prima facie* evidence of the status of each Indian claim of water right."

"Mr. Howland is undoubtedly correct in questioning the effectiveness of such a provision in a federal statute with respect to a proceeding before a state administrative board, in the absence of implementing state legislation. . . . The (State Water Rights) Board would prefer implementing state legislation directed to this specific point. In its absence such language in the federal legislation would have no practical effect, since any determination of such a right would involve not a federal but a California court or agency. One of the main purposes for creating the commission is the fact finding process described in Section 5(B). . . . In addition to the foregoing comment, the provision that "findings of fact . . . shall be *prima facie* evidence of the status of each Indian claim of water right" is somewhat confusing and ambiguous. It assumes that the facts found will be sufficient to determine status in all instances. The question arises as to what is intended to be included within the word 'status.' If it is synonymous with 'legal right,' it is apparent that facts found by the commission might or might not be sufficient upon which to establish the status of the water rights of the Indians, depending on the scope of such facts and also upon what law, state or federal, is to be applied. It appears that it

would be more appropriate to provide that 'findings of fact by the commission shall be prima facie evidence of such facts of any proceeding within the jurisdiction of a court or agency of the United States wherein status of an Indian claim of water right is an issue'."

"The board is in emphatic agreement with Mr. Howland's views that Section 9(J) of the bill is a source of potential litigation."

"It now reads: 'The laws of the State of California with respect to the loss of water rights by nonusers shall not apply until five years after the conveyance pursuant to this act of an unrestricted title to the water right and to the land to which it is appurtened.'

"The amendment suggested by Mr. Howland would restrict the immunity to the original Indian grantee."

Mr. Craig then suggested that it would be well to have implementing state legislation covering this point also.

He then proceeded to set forth the language proposed by the Department of the Interior and to discuss it as follows:

"The language proposed by the Department of Interior for Section 9(J) is as follows:

"Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of California are not now applicable to any water right appurtenant to any lands included herein they shall continue to be inapplicable or the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based on state law."

"Your letter of September 20, 1957, to H. Rex Lee, Associate Commissioner of Indian Affairs, discusses this matter. You very properly point out that it would be difficult if not impossible to determine the meaning or applicability of the language recommended by Mr. Lee. Furthermore the provision might deprive Indians, and possibly their successors, of the benefits of state law. In place of the paramount water rights accorded to owners of riparian and overlying lands under California law, Indians would be relegated to the indefinite and unknown realm of Federal law concerning their water rights. Whether the result would prove advantageous to the Indian is entirely speculative. . ."

Other correspondence indicated that all interested State Agencies had the same or similar misgivings of the language quoted in Mr. Craig's letter. The problem, as it developed, was purely one of semantics. This fact did not materially lessen the problem but at least did put all interested agencies on the basis of striving to attain the same goal, and negated any problems of negotiations or bargaining to attain the desired result.

At this point it should be pointed out parenthetically that at the time this correspondence was initiated H. R. 2824, the so-called Indian Rancheria Termination Bill, (which is set forth in the appendix) was the subject of Congressional hearings. Because that bill contained language identical to the language suggested for the

overall Termination Bill by the Department of Interior, any reference made hereafter in the quoted correspondence with regard to H. R. 2824 applies with equal dignity to H. R. 9512.

Thereafter Mr. P. A. Towner, Chief Counsel of the Department of Water Resources and Mr. Elmer F. Bennett, Solicitor for the United States Department of Interior, exchanged the following letters and suggested redrafts of the objectionable section. Their cover letters point up the intentions embodied in their respective redrafts.

June 2, 1958

MR. ELMER F. BENNETT, *Solicitor*
United States Department of the Interior
Washington 25, D.C.

DEAR ELMER: As agreed in Russ Kletzing's telephone conversation with you on May 29 when you were in Sacramento, I am enclosing a possible revision of the first two sentences of Section 4 of H. R. 2824, the Indian rancheria termination bill.

We are not at all wedded to this language, and in some respects it is perhaps confusing. The thought that we believe to be extremely important, however, is that the separating of Indian water rights from aspects of state law after termination should be dependent on implementing state legislation. Although our policy is not definitely determined, I believe that we would be in a position to strongly support such legislation. This point can be firmed up before the federal legislation is finally changed.

I should appreciate it very much if you would have your staff work on this problem and perhaps let us have a redraft to reflect your views. We will make every attempt to expedite consideration on this end.

Very truly yours,

P. A. TOWNER
Chief Counsel

AMENDMENT TO H.R. 2824 (Suggested by California)

SEC. 4. Nothing in this act shall abrogate any water rights that exists by virtue of the laws of the United States. To the extent that *may be provided by State law* the laws of the State of California ~~are not now~~ *relating to the loss of water rights in any manner shall not be* applicable to any water rights appurtenant to any lands involved herein ~~they shall continue to be inapplicable~~ while the water right is in Indian ownership for a period not to exceed 15 years after the conveyance pursuant to this act of an unrestricted title thereto, and ~~thereafter~~ the applicability of ~~such~~ *the laws of California* shall be without prejudice to the priority of any such right theretofore based upon state law. . . .

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

WASHINGTON 25, D. C., June 17, 1958

MR. P. A. TOWNER, *Chief Counsel*
Department of Water Resources
State of California
Sacramento 2, California

DEAR PAT: We have studied the suggested redraft of the first two sentences of Section 4 of H.R. 2824, the Indian rancheria termination bill, that was enclosed with your letter of June 2, 1958. In accordance with your suggestion, I am enclosing for your consideration a further redraft of the section.

Our redraft retains the substance of the present language of the bill but provides that the federal legislation on the subject of water rights will cease to be effective when the State has enacted legislation to the same effect. As the State has not legislated on the subject, we feel that Indian water rights should be protected by federal law until the state legislation has been enacted. Thereafter, the state law will be controlling.

I shall appreciate receiving your reaction to this approach.

Sincerely yours,

ELMER F. BENNETT
Solicitor

AMENDMENT TO H.R. 2824

(Suggested by Department of the Interior)

SEC. 4. (a) Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States.

(b) The laws of the State of California relating to the loss of water rights in any manner shall not be applicable to any water right not based on state law that is appurtenant to any lands conveyed to an Indian pursuant to this act while the water right is in Indian ownership for a period not to exceed 15 years after such conveyance, and the applicability of the laws of California shall be without prejudice to the priority of any such water right. The provisions of this subsection shall cease to have any force and effect when the Secretary of the Interior publishes in the Federal Register a notice that the State of California has enacted legislation that conforms substantially to the provisions of this subsection.

(c) During the time the state law relating to the loss of water rights is not applicable, the United States Attorney General shall represent the Indian owner of the water right in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

FURTHER COMMENTS ON AMENDMENTS TO FEDERAL LEGISLATION ON WATER RIGHTS

H.R. 2824 eventually was passed, and became Public Law 85-671, containing the original language regarding water. This was done even though the interested agencies still had their reservations concerning this water language. It was thought, however, that because the individual rancherias subject to that bill had their water problems well stabilized, the chances of immediate problems arising would be slight, and not of sufficient immediate concern to warrant stopping passage of an otherwise meritorious bill. The general feelings along this line are expressed in the following three letters from John A. Bohn, Counsel for this committee, to H. Rex Lee, Associate Commissioner of Indian Affairs, and to Stewart French, Counsel for the Senate Committee on Interior and Insular Affairs, and in a letter from Mr. P. A. Towner, Chief Counsel for the Department of Water Resources to Mr. Bennett, Solicitor of the United States Department of Interior. These letters are set forth in full below:

BENICIA, CALIFORNIA, July 15, 1958

HONORABLE STEWART FRENCH

*Counsel Senate Committee on Interior and Insular Affairs
Washington, D.C.*

Re: H.R. No. 2824

DEAR MR. FRENCH: At a recent conference with members of the California State Water Rights Board and the legal division of the California Department of Water Resources regarding H.R. No. 2824 it was the consensus of opinion that Section Four (4) of that bill, relating to water rights, presents certain technical difficulties that require classification.

First, Section 4 makes reference to "Indian water rights" and to "Indian owners" without a precise definition of those terms. It is anticipated that this lack of definition could cause some confusion after passage of the bill if certain situations arose.

For instance, if a distributee were to hypothecate his interest, or if he were to die leaving a non-Indian spouse, problems would arise regarding "Indian ownership" or the lack of it, or whether or not specific water rights would be "Indian water rights" or not. The same problems could arise if the Indian group incorporated its holdings or if trusts were established and non-Indians received legal or equitable interests in the subject property. These are only a few of the many imaginable situations that could arise which would cast some doubt on the fact of ownership, that is, whether or not the interest was still vested in an Indian, within the meaning of the act.

Second, there appears to be some question regarding the feasibility of enacting federal legislation which is designed to stay the application of state water law after the subject property has passed

into private ownership. Perhaps concurrent state legislation would be necessary, or at least desirable.

In view of these problems which have recently come to light, this committee, the California Department of Water Resources and the California Water Rights Board are attempting to schedule a conference with Mr. Rex Lee and Mr. Sigler of the Bureau of Indian affairs and Mr. Elmer Bennett, Solicitor of the Department of Interior. The earliest possible tentative date for such a conference is in the last week of September 1958.

If deemed desirable by your committee, the undersigned is certain that the problems outlined in this letter can be solved at such a conference.

Very truly yours,

JOHN A. BOHN

BENICIA, CALIFORNIA, July 15, 1958

H. REX LEE, Esq.

*Associate Commissioner of Indian Affairs
Department of Interior
Washington, D.C.*

Re: H.R. No. 2824

DEAR REX: Enclosed you will find a copy of a letter sent to Stewart French, counsel for the subcommittee now studying H.R. No. 2824.

The letter resulted from a conference with the parties indicated therein during the course of which we had a thorough discussion of the technical problems to which the letter refers. As indicated, it was the general consensus of opinion that some of the present language of Section 4 of H.R. No. 2824 could lead to difficulties, with special emphasis being directed toward the lack of precise definition of the terms "Indian ownership" and "Indian water rights" which are the subjects of the section.

Also raised again was the question of whether or not federal legislation could stay the application of the state water law. I know that there are differences of opinion on this question, but it would seem that the simplest solution would be to have concurrent state legislation cover the subject if possible.

Because of the concern regarding Section 4 and because it was felt that it would be impractical to attempt to submit a hastily drafted proposed amendment to the bill as now written, the enclosed letter was sent to the subcommittee. Please understand that this action does not indicate any opposition to the general purposes of H.R. No. 2824, but only indicates some concern with certain technical aspects of the bill as now written.

In order to iron out these difficulties and to assist H.R. No. 2824 and other termination bills in reaching a successful conclusion, we would like to arrange a conference as suggested by you in your letter of May 28, 1958. We, that is, the California Department of Water Resources, the California Water Rights Board, and my staff would like to suggest a tentative date in the last week of

September, in Sacramento, if it would be possible for you and Mr. Sigler to attend at that time.

The Department of Water Resources is going to contact Mr. Elmer Bennett, Solicitor for the Department of Interior, to see if he can be present at that time.

It was our unanimous opinion that such a conference would be of immeasurable value in straightening out the water problems that are somewhat of a stumbling block for the California termination program.

Very truly yours,

JOHN A. BOHN

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
SACRAMENTO, July 16, 1958

MR. ELMER BENNETT, *Solicitor*
United States Department of the Interior
Washington 25, D. C.

DEAR ELMER: Thank you for your letter of June 17 with regard to H. R. 2824. I appreciate the thought that you have given to Section 4 of that bill, but it appears to me that the amendment that you forwarded would not solve the basic problem. The problem is that Section 4 as originally drawn or as provided in your amendment would purport to affect rights under state law.

On July 1, we met with representatives of the staffs of the State Water Rights Board and the State Senate Interim Committee on California Indian Affairs. In our discussion it developed that there are some additional problems involved in Section 4. Most difficult of these is the vagueness of the term "Indian ownership." Under the bill, land may be distributed to corporations or trustees acting for Indians, and perhaps in some cases to distributees who are not blood Indians. I feel that the enactment of H. R. 2824 with the present Section 4 would establish an unfortunate precedent and might well create difficult problems in the water rights field for the Indians on the rancherias involved.

We have not as yet developed an alternative to Section 4 that would solve all the problems. It appears, however, that any suspension of California water law should be only with regard to loss of rights through nonuse, since, as Section 4 is now drawn, the Indians might lose right under California law or might be unable to establish new ones during the 15-year suspension period.

Mr. Bohn of the State Senate Committee has been in correspondence with Associate Commissioner Lee of the Bureau of Indian Affairs concerning the holding of a conference early this fall to work out mutually acceptable provisions concerning water rights in Indian termination legislation. If H. R. 2824 does not pass in this Congress, it could be a subject of discussion. In any case, and probably more important, the similar language in the general California termination bills, H. R. 9512 and 9530, ought to be worked

out. The meeting is planned for Sacramento, and I hope sincerely that you may be able to attend.

Thank you very much for the co-operation that you have given us.

Very truly yours,

P. A. TOWNER, Chief Counsel

On August 5, 1958, Mr. Bennett wrote to Mr. Towner as follows " * * * H. R. 2824 has passed both the House and Senate, but with differences that might require conference action. We are hopeful that the bill will be enacted. We would not regard the water rights provisions as a precedent, however, and would be quite willing to make any language that may be worked out for H. R. 9512, the Statewide Bill, supersede the present language in H. R. 2824, even though it may have been enacted. I am sure that you are aware that the rancherias involved in H. R. 2824 do not have water rights of any importance and that the language now contained in H. R. 2824 should have little practical effect on the administration of the state law. * * * " A meeting was scheduled for the last week of September, 1958, at which time representatives of the various federal and state agencies and of this committee were to attempt to arrive at a general agreement as to the basic problems presented and the best possible legislation to solve these problems. The scope of this discussion was, through prior correspondence narrowed to the following issues:

1. The redrafting of Section 9(J) of H. R. 9512 (Section 4 of H. R. 2824)
2. The redrafting of Section 5 of H. R. 9512, with special emphasis on Section 5(B)
3. The necessity of implementing state legislation, and the drafting thereof.

Prior to the September meeting the Department of Water Resources wrote to this committee the following letter, enclosing draft language for a new Section 9(J) of H. R. 9512 and a draft of supplemental state legislation which would add Section 1241.5 to the California Water Code.

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES
SACRAMENTO, CALIFORNIA, September 15, 1958

MR. JOHN A. BOHN

Statler Hotel

Boston, Massachusetts

DEAR MR. BOHN: I am enclosing copies of legislative proposals that we might wish to present to the federal officials at the meeting on Indian termination legislation in Sacramento on September 25. The proposals are for an amendment to Section 9(j) of H.R. 9512 or H.R. 9530 and a complementary bill amending state law. I am also sending a copy of this letter and of the legislation to your office in Benicia, as well as a copy of a letter from Elmer Bennett dated August 5.

We plan to get together with the staff of the State Water Rights Board for a preliminary discussion on September 23 or 24, and we would very much like to have you or Mr. Swan participate.

Please let me know whether this will be possible and whether you have any suggestions concerning the drafts of legislation. In particular, you may have some suggestions concerning the last paragraph of the state bill.

Very truly yours,

HARVEY O. BANKS
Director of Water Resources
By P. A. TOWNER
Chief Counsel

CALIFORNIA'S SUGGESTIONS ON CORRELATED STATE AND FEDERAL WATER RIGHTS LEGISLATION

A. AMENDMENT TO H.R. 9512 AND H.R. 9530

Section 9(j). To the extent provided by the law of California, its laws with respect to loss of water rights by nonuse, abandonment, and prescription shall not apply to water rights appurtenant to or for use on any land described in subsections (a) or (b) of this section until five years after the conveyance pursuant to this act of an unrestricted title to the land and the water rights appurtenant to or for use on such land, but only for such portion of that period as the land and water rights are in Indian ownership. "Indian ownership" means the exclusive ownership of or ownership for the exclusive benefit of any person or persons included in a plan that is carried out in accordance with this section.

B. DRAFT OF STATE BILL

An act to add Section 1241.5 to the Water Code relating to Indian water rights.

The people of the State of California do enact as follows:

SECTION 1. Section 1241.5 is added to the Water Code, to read:
1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, and prescription shall not apply to water rights appurtenant to or for use on any trust land until five years after the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land, but only for such portion of that period as the land and water rights are in Indian ownership.

As used in this section:

(1) "Trust land" means any land in this State (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian; or (b) owned by a particular Indian or any tribe, band or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such land is occupied by Indians or their families.

(2) "Indian ownership" means exclusive ownership by, or ownership for the exclusive benefit of, any person or persons in-

cluded in a plan which is carried out for the distribution or disposition of trust land.

The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, abandonment, and prescription are suspended with regard to such Indians so that they will not lose the water rights and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to the water rights of Indians is in the public interest and will promote the public welfare since it will promote the economic and social well-being of the Indians and the communities in which they reside and will tend to prevent such Indians from becoming indigent public charges.

The meeting held in Sacramento on September 25, 1958, resulted in substantial agreement on all three of the main issues discussed, and was considered by all participants to be a success. Following that meeting the State Department of Water Resources submitted to this committee the following redrafts of its suggested supplemental State Legislation (Section 1241.5 of the California Water Code) and its redraft of Section 9(J) of H. R. 9512 and Section 4 of what was by that time the Act of August 18, 1958 (72 Stat. 621), formerly H. R. 2824, as follows:

October 1, 1958
DWR Draft

C. AMENDED STATE BILL ON INDIAN WATER RIGHTS

An act to add Section 1241.5 to the Water Code relating to Indian water rights.

The People of the State of California do enact as follows:

SECTION 1. Section 1241.5 is added to the Water Code, to read:
1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence shall not apply to water rights appurtenant to or for use on any trust land until five years after the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land.

As used in this section, "trust land" means any land in this State (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian; or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such land is occupied by Indians or their families.

The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence are suspended with regard to such land and water rights so that they will not lose the benefit of the water rights and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to such water rights is in the public interest and will promote the public welfare since it will promote the economic and social well-being of the Indians and the communities in which they reside and will encourage the self-sufficiency of the Indians.

October 1, 1958
DWR Draft

D. FURTHER AMENDMENT TO H.R. 9512 AND H.R. 9530

SECTION 9(j). Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States nor prejudice its priority. For a period of 10 years after the conveyance pursuant to this section of an unrestricted title to land and water rights, the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies involving such water rights and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water rights.

Section 4 of the Act of August 18, 1958 (72 Stat. 621) is amended to read as follows:

"Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States, nor prejudice its priority. For a period of 10 years after the conveyance pursuant to this section of an unrestricted title to land and water rights, the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies involving such water rights and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water rights."

FINAL APPROVED DRAFTS WATER RIGHTS LEGISLATION

On October 17, 1958, in a letter to Mr. Towner the Solicitor for the Department of the Interior, Mr. Bennett reviewed the entire situation and set forth complete redrafts of all of the sections discussed heretofore. This draft follows the generally agreed upon language but makes several technical changes in the overall format. For instance, Mr. Bennett suggests that Section 9(J) be relocated in the overall bill and be redesignated Section 5(F). Section 5(G) of Mr. Bennett's draft applies the same language to the "rancheria bill" by amendment thereto. All agencies submitted similar redrafts of the entire matter, but only Mr. Bennett's will be set forth here in full. Because of the

basic similarity in all drafts it would serve no useful purpose to set them forth here, but following this letter there will appear a summary of the basic differences still existing in the respective drafts.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D.C., October 17, 1958

DEAR PAT: I have had a report from Mr. Sigler of your meeting on September 25 regarding the water provisions in the proposed California termination legislation, and am very pleased at the agreements reached. Our understanding is that:

1. Section 5 of H.R. 9512, 85th Congress, will be revised to read substantially along the following lines before the State asks to have the bill reintroduced in the 86th Congress:

- (a) There is hereby established a commission to be known as the California Indian Water Affairs Commission (hereinafter called the commission) which shall be composed of one member appointed by the Secretary of the Interior, one member appointed by the Governor of California, and one member selected by the other two members. The commission shall by regulation provide opportunity for a representative of the tribe, band, or group of Indians involved to participate in proceedings involving the usage and rights of such group, or its members. The commission shall elect from its membership a chairman. The members of the commission shall receive no salary as a result of their membership on the commission, but they may be paid for necessary expenses authorized by the commission, including their travel and subsistence expenses while engaged in commission activities.
- (b) The function of the commission shall be to collect information and based thereon make findings of fact pertaining to water use and water rights, including presently defined rights, for trust Indian land in California, as hereinafter defined. Information gathered may include any matter relevant under federal or state law. The commission shall adopt reasonable rules of procedure which may include all or part of the procedures set forth in the California Water Code in connection with the ascertainment and determination of water rights. The commission shall cause its findings of fact to be recorded in the county where the land is located and to be filed with the Secretary of the Interior and the administrative agency of the State of California vested with functions relating to adjudication of water rights. Said findings of fact shall be prima facie evidence of such facts in any proceeding wherein status of an Indian claim of water right is in issue within the jurisdiction (1) of any court or agency of the United States and of (2) to the extent provided by state law, of any court or agency of the State of Cali-

fornia. No action taken pursuant to this section shall be regarded as an adjudication of an Indian water right.

As used in this section, "trust Indian land" means any land in California (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian, or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States, or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians or any particular Indian, if any part of such land is occupied by Indians or their families.

- (c) The commission is authorized, without regard to laws and procedures applicable to federal agencies, to procure services, supplies, and property, to enter into contracts with any federal, state or other public or private agency or individual, to hold hearings, to take any other action necessary to carry out its functions, and to incur necessary expenses in an amount not exceeding \$300,000 over a period of five years. There is authorized to be appropriated \$75,000 for the fiscal year in which the commission begins its operations, and such amounts as may be necessary for succeeding fiscal years. An executive officer selected by the commission shall pay the expenditures authorized by the commission, keep complete records of all expenditures, and account for such expenditures in the reports of the commission.
- (d) The commission shall submit to the Secretary of the Interior and to the Governor of California progress reports from time to time, and a final report not later than five years from the date of this act or as soon thereafter as the accomplishment of work provided for under this section will reasonably permit. The commission shall terminate with the submission of its final report. The commission may include in any of its reports recommendations for further state or federal legislation.
- (e) Before making the conveyances authorized by the act of August 18, 1958 (72 Stat. 619), or by any subsequent legislation providing for the distribution of the property of Indian rancherias and reservations in California, the Secretary of the Interior shall consider the findings of fact of the commission and make use of its reports and data in such way as in his judgment will best protect and preserve the water rights applicable to property being distributed in a manner compatible with both federal and California law.
- (f) Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States, or shall prejudice its priority. For a period of 10 years after the

conveyance pursuant to this act of an unrestricted title to any land and appurtenant water right, the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

- (g) Section 4 of the act of August 18, 1958 (72 Stat. 619), is hereby revised to read as follows: Nothing in this act shall abrogate any water right that exists by virtue of the laws of the United States, or shall prejudice its priority. For a period of 10 years after the conveyance pursuant to this act of an unrestricted title to any land and appurtenant water right, the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

The foregoing language follows the drafts that were discussed at the September 25 meeting with the following exceptions:

- (a) In subsection (b), we have retained the provision for the commission to investigate any matter that is relevant under federal or state law, but have omitted the partial enumeration of the things that are to be regarded as relevant. I understand that the consensus was either to omit the enumeration or to expand it to include the subjects that are peculiarly applicable to Indian rights. After further consideration, we feel that the enumeration serves no useful purpose, that any enumeration would necessarily be incomplete, that an incomplete enumeration might be interpreted restrictively, notwithstanding the provision that the enumeration does not limit the generality of the general provision. We therefore much prefer to omit the enumeration.
- (b) The definition of "trust Indian land" has been conformed to the language used in the draft state bill.
- (c) Subsection (f) contains the language that was agreed upon for subsection 9(j) of H.R. No. 9512. We suggest that the subject matter more appropriately belongs in Section 5 than in a later section.

Our understanding is that this subsection, which omits all reference to the laws of the State, was adopted with the understanding that state legislation will be proposed to the State Legislature in January, that an effort will be made to obtain its early enactment, and that the language in the federal bill will be reconsidered if the state legislation has not been enacted by the time the federal legislation reaches its final stages. This approach should avoid the troublesome problem of federal retention of jurisdiction over Indian water rights after all other jurisdiction over the Indian land

has been terminated, and I am glad that an agreement was reached on this procedure.

2. The state legislation to be proposed will be substantially as follows:

An act to add Section 1241.5 to the Water Code relating to Indian water rights.

The people of the State of California do enact as follows:

SECTION 1. Section 1241.5 is added to the Water Code, to read:

1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence shall not apply to water rights appurtenant to or for use on any trust land until five years after the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land.

As used in this section, "trust land" means any land in this State (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian; or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such land is occupied by Indians or their families.

The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence are suspended with regard to such Indians so that they will not lose the water rights and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to the water rights of Indians is in the public interest and will promote the public welfare since it will promote the economic and social well-being of the Indians and the communities in which they reside and will tend to prevent such Indians from becoming indigent public charges.

The five-year period used in the foregoing language represents a compromise with the language that is contained in the rancheria act, which uses a 15-year period or such shorter time as the water right remains in Indian ownership. The difficulty of defining Indian ownership (either in terms of individuals or of corporations controlled by individuals) is so great that the consensus was that a shorter time period should be used and all reference to Indian ownership omitted. By suspending the state law for five years, the

owners of the present Indian water right will get an initial five-year period, plus the usual prescriptive period of three or five years depending upon the circumstances, making a total of 8 to 10 years in which to put the water to beneficial use. This seems to us to be a reasonable provision.

I also understand that agreement was reached on the probable need for further state legislation dealing with the way in which the priority of the Indian water right is to be fitted into the state system, but that the details of such legislation should be deferred until the proposed commission has completed its work. Meanwhile, of course, the language in the federal bill does all that the federal government can do to protect the priority. Unless the State by legislation can provide an orderly procedure for integrating Indian priorities with other priorities under state law, the problem will of necessity be left for the courts.

Mr. Sigler had some uncertainty about who was to take the next step in revising the draft materials that were considered at the September 25 meeting, but in order to further our joint efforts we have taken the liberty of setting forth our understanding and suggestions. If they do not conform to your ideas, please do not hesitate to give us redrafts.

Let us repeat our gratitude at the co-operative attitude displayed and our pleasure about the large area of agreement that was reached.

Sincerely yours,

ELMER F. BENNETT
Acting Secretary of the Interior

After further conferences with representatives of this committee and of the State Water Rights Board, the following letter was sent to the Department of Interior summarizing the five minor points that still were to be reconciled.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
SACRAMENTO, December 19, 1958

MR. ELMER F. BENNETT
*Under Secretary
Department of the Interior
Washington 25, D.C.*

Subject: California Indian Termination Legislation

DEAR ELMER: Since your letter of October 17, there have been several exchanges of correspondence between the three state agencies that are involved concerning the drafts that were attached to that letter. I am enclosing copies of the following:

- (1) My letter of November 12, to John A. Bohn.
- (2) A letter dated December 1, from the State Water Rights Board to John A. Bohn.
- (3) A letter dated December 13, from John A. Bohn to the State Water Rights Board.

(4) A letter from the State Water Rights Board to John A. Bohn dated December 16.

The import of the enclosed correspondence is that the legislation attached to your letter of October 17, is generally satisfactory. There are, however, five points that have been raised which appear to need your further consideration.

(1) The first proposal in the letter from the State Water Rights Board dated December 1, is to amend the second sentence of Section 5(b) of your proposal for the federal bill to read:

"Information gathered may include any matter relevant under federal or state law, including but not limited to reasonable water requirements for irrigation or other purposes, as well as matter bearing on riparian location or status, or relating to actual usage, such as sources of supply, lands irrigated, the amounts, nature, place and duration of water use, and the location and capacity of diversion works, including wells, dams and ditches."

The board indicated that it was willing to leave the final decision concerning this proposal to you.

(2) The board's second suggestion made in the same letter would amend the first sentence of Section 5(d) of the federal bill so that it will conclude:

"... or as soon thereafter as the accomplishment of work provided for under this section or Section 4 will reasonably permit."

(3) The third suggestion that the board made in its December 1 letter concerned the use of "until" in the first sentence of the state bill to add Section 1241.5 to the Water Code. It was pointed out that under this language the suspension of state law might be considered to occur even before the conveyance of an unrestricted title to trust land. The following change is suggested to obviate this problem:

"1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence shall not apply to water rights appurtenant to or for use on any trust land until for the period of five years after following the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land."

(4) In my letter of November 12, I called attention to our proposal to change the last paragraph of proposed Water Code Section 1241.5 to read:

"The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, aban-

donment, prescription, and lack of diligence are suspended with regard to such ~~Indians~~ *land and water rights* so that they will not lose the *benefit of the water rights* and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to ~~the such water rights of Indians~~ is in the public interest and will promote the economic and social well-being of the Indians and the communities in which they reside and will ~~tend to prevent such Indians from becoming indigent public charges~~ *encourage the self-sufficiency of the Indians.*"

(5) In his letter of December 13, Mr. Bohn suggested that Section 1241.5 be conditioned on the enactment of a federal bill. The following language is suggested in this connection as an additional paragraph at the end of Section 1241.5:

"This section is not to take effect until after the enactment of federal legislation authorizing the establishment of a California Indian Water Affairs Commission."

It would be appreciated if you would indicate your views on the five items just discussed. Also, enclosed with the December 1 letter from the State Water Rights Board is a draft of legislation to add Chapter 2.5 to Part 3 of Division 2 of the California Water Code. It would be appreciated if you would review this draft and offer any comments that you may have.

Very truly yours,

HARVEY O. BANKS
Director of Water Resources

(Signed)

By P. A. TOWNER
Chief Counsel

In replying to this letter on March 6, 1959, Mr. Elmer Bennett wrote to Mr. Towner a letter which said in part as follows:

" . . . In reply to your letter of December 19, 1958, regarding the proposed California Indian Termination Legislation, all of the language changes set forth in your paragraphs Nos. 1, 2, 3, 4, and 5 are agreeable to us.

We have also reviewed the Draft Bill to add Chapter 2.5 to Part 3 of Division 2 of the California Water Code, and have no suggestions to offer. It should do the job . . . "

As a result of the foregoing correspondence, discussions, and conferences, it was unanimously agreed by representatives of all interested agencies that H.R. 9512 be redrafted to conform to the conclusions therein reached.

SPECIFIC WATER PROBLEMS

The preceding discussion has concerned the general language in the bill designed to provide for an orderly transferal of water rights to the grantee Indian when and if the subject land is transferred from fed-

eral supervision to private ownership. In addition to these general problems, in one area of the State some specific problems concerning water were called to the attention of the committee. These problems are discussed generally throughout the excerpts of the hearings at Bishop, California, which appear in the 1955 Committee Report beginning on Page 299.

Briefly, the history of the situation is that: Some years ago the federal government arranged a land trade with the City of Los Angeles. The government conveyed to the City of Los Angeles extensive watershed areas which had been held for the Indians in that area. In return, the City of Los Angeles conveyed to the federal government a lesser amount of more valuable property upon which the Indians were relocated. This conveyance to the federal government included a certain specified water rights for the land.

The specific problems in this area can best be pointed out by including in this report the following excerpt from a memorandum to this committee from an investigator who interviewed Indians in the Big Pine, Lone Pine, and Bishop area. He reported as follows:

“ . . . The questions that the Indians feel must be answered before they can support any Termination Legislation are as follows:

1. Will they still be entitled to receive water from Los Angeles after federal control is terminated?
2. If so can the Indians sell their land to non-Indians and deliver the water rights with the land?
3. If the Indians retain their land after termination and the land becomes primarily residential rather than agricultural can they still retain their water rights?

“Section 5 of H.R. 9512 and H.R. 9530 establishes the California Indian Water Affairs Commission to inquire into the various water problems prior to the effective date of termination. The Indians feel that their water right status should be established prior to the passage of any Termination Legislation. They fear that once the Termination Bill is passed the federal control over their property will cease after a period of time even though in the interim period it may be discovered that the answers to the three questions listed above are all determined to be negative. They would prefer to remain in their present status forever rather than to risk the possibility of these unfavorable decisions . . . Thus, the principal problems facing the Indians of this area can be summarized as follows: They feel that it is imperative that the water rates be adjudicated or guaranteed prior to the passage of any bill that will set in motion a termination program. If their choice is between remaining in trust status on irrigated land or receiving the title to arid land, they would prefer to remain wards of the federal government.”

Subsequent investigations of these problems indicate that the Indians' fears are probably unfounded. Following, set forth in full, are opinions of the office of the California Legislative Council and of the Solicitor

of the United States Department of Interior which both indicate that the answers to the questions raised by the Indians will be in the affirmative, that is, the water rights will follow the land after termination of federal supervision.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, July 8, 1958

HON. CHARLES BROWN
Shoshone, California

INDIAN WATER RIGHTS—NO. 3501

DEAR SENATOR BROWN:

QUESTION

You have asked the effect of the termination of federal control over Indian affairs with reference to the water rights referred to in the deed from the City of Los Angeles to the United States on June 26, 1939, conveying land in trust for Owens Valley Indians. Specifically you have asked whether the water rights mentioned in the deed continue to be appurtenant to the land after it is allocated to the Indians, and would these rights continue to be attached to the land in the hands of a purchaser from these Indians. We assume the termination of federal control over the Indian lands to which you refer is that authorized under H.R. 9512 and H.R. 9530 of the 85th Congress, First Session.

OPINION

We do not believe it can categorically be determined what effect the termination of federal control under these bills will have on the water rights involved without having the specific allotment in question before us. We do believe the water rights presently are appurtenant to the land and could be transferred under allotments to the Indians, and could then be transferred by the Indians to subsequent purchasers if the allotment plan finally agreed upon so provided.

ANALYSIS

Preliminarily, H.R. 9512 and H.R. 9530 of the 85th Congress, First Session, do not provide for immediate termination of federal control of the lands involved as provided under the so-called rancheria bills (see H.R. 2824, H.R. 2838, H.R. 6364, and H.R. 2576, 85th Congress, First Session, and Progress Report, Senate Interim Committee on California Indian Affairs, June 3, 1957). H.R. 9512 and H.R. 9530, in general, authorize each tribe, band, or other group of Indians in California affected, or the Secretary of the Interior after consultation with such Indians, to prepare a plan for distributing or disposing of the lands involved by allotment and subsequent conveyance of title or removal of trust restrictions on the property by the Secretary of the Interior. Thus, we cannot categorically determine the effect of termination of federal control under these bills until such plan of distribution has been formulated and is before us.

However, as to the water rights involved, it has been held that "It is well settled that water for irrigation, while in ditches and reservoirs, is generally considered as real property and appurtenant to the land" (*San Juan Gold Co. v. San Juan Ridge Mutual Water Association* (1939), 34 Cal. App. 2d 159). Also it has been held that an agreement executed contemporaneously with a deed which conveyed land from one party to another, which agreement provided that the grantor should furnish water to the grantee for use by the grantee upon the land conveyed, created an interest in the real property of the grantee appurtenant to the land upon which the water was used (*Relovich v. Stuart* (1931), 211 Cal. 422).

It has also been held that a right to use water upon land is an appurtenance of the land and is therefore real property, and passes with a conveyance of the land upon which the water is used (*Farmer v. Ukiah Water Co.* (1880), 56 Cal. 11), however such right may be severed from the land by grant (*Gould v. Stafford* (1891), 91 Cal. 146, 155). On severance such right may then become appurtenant to new land on which the water is used (*Cross v. Kitts* (1886), 69 Cal. 217, 221).

The deed from the City of Los Angeles as grantor to the United States of America as grantee provides, in general, for the exchange of 3,126 acres of Indian lands held in trust by the United States for 1,511.48 acres of land owned by the City of Los Angeles. The city specifically reserved all water rights to the land it conveyed to the United States and the water rights to the Indian lands of the United States were reserved to the United States with the city agreeing to deliver the water under the prior rights to the new Indian lands. In addition, the city agreed to deliver an additional amount of water to the new Indian land which represented a share of the water which would be saved because of the lower transportation losses experienced in delivering water to the new Indian lands over delivering water to the old Indian lands.

The place of use of the Indian water rights transferred and the fact that they are intended to be appurtenant to the new Indian lands are specifically set forth in this deed (pp. 15 to 19), as well as the place of use, manner of use, and appurtenant nature of the water rights created by and conveyed because of the savings in transportation losses (pp. 17 to 19).

This water is declared to be for use on the land acquired from the city. It is declared to be intended as appurtenant to this land. There is evidence that water delivered under these rights has been applied to a beneficial use on these lands (Progress Report, Senate Interim Committee on California Indian Affairs-Appendix to Senate Journal 1955 at page 298 and following). In view of the express provisions of this deed and the applicability of this water to the land, we believe under the principles discussed above, these water rights would be appurtenant to this land.

The bills providing for termination of federal control of Indian affairs in general provide for the preparation of a plan for distributing or disposing of the property held by the United States for the use of Indians in California. Without having the particular plan before us, we cannot determine what effect termination of federal control will have on the water rights in question.

It should be noted that these bills provide for the establishment of a commission to be known as the California Indian Water Affairs Commission whose function shall be to collect and to record in the county where the land is located, and to file with the agency of the State of California vested with functions relating to adjudication of water rights, information pertaining to water use and to make findings of fact which apply to each claim of water rights for each parcel, including the recordation of all presently defined rights (Sec. 5, H.R. 9512 and H.R. 9530).

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By KENT L. DECHAMBEAU
Deputy Legislative Counsel

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D.C., March 16, 1956

Memorandum

To: Commissioner of Indian Affairs

From: Solicitor

Subject: Water rights of Bishop, Big Pine and Lone Pine Reservations, California

In a memorandum of February 15, 1956, you requested a legal opinion as to whether the City of Los Angeles, California, is obligated to continue the delivery of water to certain lands in the event that these lands (1) become fee patented and (2) be sold to non-Indians. The lands comprise the Indian reservations cited above which are located in Inyo and Mono Counties, California, and which were conveyed in fee by the City of Los Angeles to the United States and its assigns by a deed bearing the date of June 26, 1939.

An act of April 20, 1937 (50 Stat. 70) authorized the Secretary of the Interior to enter into a land exchange with the City of Los Angeles and to accept title on behalf of the United States to lands and water rights then owned and held by the City of Los Angeles in the Counties of Inyo and Mono, State of California, if, in his judgment the interests of the Indians in said counties would be benefited thereby. In exchange, therefore, the said secretary was authorized to issue a patent or patents to the said city for lands, water rights, and buildings held by the United States for the benefit of the Indians, provided that the lands, water rights, and buildings covered by the patent or patents did not exceed in value the lands and water rights conveyed by the said city to the United States. Pursuant to this act an indenture dated June 26, 1939, provided for the exchange of lands between the city and the United States as trustees together with a covenant to deliver 6,045.92 acre-feet of water per annum. In the alternative water could be extracted from local sources, either from

streams or from wells under the land. It was also expressly stated that the agreement shall "inure to the benefit of and be binding upon the city and its successors and assigns and the United States and its assigns."¹

It now appears that the city admits its obligation to deliver or allow offsets for water on the exchanged lands only as long as the United States holds title for benefit of the Indians. It has been contended on behalf of the city that the city only agreed to deliver an amount of water calculated to supply the needs of the Indian occupants, and that it stands to lose valuable water rights in the event that the subject lands are occupied by non-Indian purchasers whose water needs may be greater.²

The indenture between the city and the United States purports, however, to be an exchange of property for the mutual benefit of both parties. It creates a vested right in the United States to use a particular quantity of water on the four tracts of land exchanged.³ It further provides that the covenant shall inure to the benefit of the assignees of the United States. These words cannot be construed as a restriction upon the United States against alienation of the land or the water appurtenant thereto. The deed does not restrict the use of delivered water to a use solely by Indians. The promise for delivery of water or for extraction of water from local sources in the alternative is absolute.

It is my opinion, therefore, that the issuance of a patent to such land either to an Indian or a non-Indian would in no way terminate the obligation of the city as promised in the deed.

(Signed)

J. RUEL ARMSTRONG
Solicitor

Because of the Indians' request that the water rights should be adjudicated prior to the instigation of a termination program, again the opinion of the California Legislative Counsel was sought. Their opinion, set forth below, indicates that an action for declaratory judgment could be instituted in advance of the actual termination. Such an action would have to be brought either by the federal government or by the Indians themselves.

¹ Deed. The City of Los Angeles (a municipal corporation) and the Department of Water and Power of the City of Los Angeles, Grantors, to the United States of America, Grantee, § 23, p. 7, § 29, p. 11.

² Report of the Senate Interim Committee on California Indian Affairs. Senate of the State of California (S.R. 115) 1955, pp. 302-303.

³ Deed. *supra*. § 30, pp. 15, 16, § 31, p. 18.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, February 12, 1959

HONORABLE CHARLES BROWN
Senate Chamber

INDIAN WATER RIGHTS—NO. 5897

DEAR SENATOR BROWN:

QUESTION

You have asked whether an action for declaratory relief may be instituted on behalf of the Owens Valley Indians to determine their water rights under a deed from the City of Los Angeles to the United States on June 26, 1939. As we understand it, the question involved is the rights of the Indians and their grantees to the water involved in the deed in the case of termination of federal control over Indian affairs in this area.

OPINION

In our opinion the answer to your question is in the affirmative.

ANALYSIS

An action such as contemplated in the present instance involves the declaration of rights and obligations under a deed to property. Such actions are authorized both under the federal law (28 U.S.C.A. 2201) and the state law (Sec. 1060, C. C. P.). Since the United States is a party to the deed, the action would be proper in either court.

As to who could institute such an action on behalf of the Indians, the United States, as the guardian of the Indians, could institute the action or the Indians themselves could do so (27 Am. Jur., *Indians*, Secs. 23, 21).

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By RAY H. WHITAKER
Deputy Legislative Counsel

IV

GENERAL TERMINATION PROBLEMS

The bulk of this report concerns the efforts expended by interested parties to arrive at a satisfactory conclusion to problems concerning water rights. A review of the previous reports of this committee will show that other problems arising through the termination program have been quite thoroughly analyzed and evaluated, and the major portion of H.R. 9512 has, in general, fairly well met the registered objections.

This does not mean, however, that all persons concerned are satisfied with the bill. Therefore, set forth below, are a few of the adverse or partially adverse communications received by this committee.

The first document set forth is a "comment" by Mrs. Rosa Sunderland of Yreka.

COMMENTS ON THE TERMINATION LEGISLATION PROPOSED BY THE CALIFORNIA SENATE INTERIM COMMITTEE ON CALIFORNIA INDIAN AFFAIRS

May 1, 1958

One problem casts its shadow across both the termination program proposed by the State of California and that proposed by the Bureau of Indian Affairs. That is the clash of interest between the 7,000 or 8,000 reservation Indians and the 25,000 nonreservation Indians over the judgment fund established as a result of the award of the U. S. Court of Claims in favor of the California Indians. The value of the lands now constituting the reservations and rancherias as well as other physical properties and services was deducted from the Court's award to the Indians. The award amounted to something over \$17,000,000. After deducting the above offsets, there was left a fund of about \$5,000,000 for all the Indians to share in. Accordingly, it would seem that these properties belong to all the California Indians rather than solely to the reservation Indians among whom it is now proposed to partition them, at the same time permitting the reservation Indians to participate equally in the judgment fund and in any other general fund that may be established. In addition, the reservation Indians have received many other benefits from the federal government while their non-reservation brothers have received practically nothing. The proposal (Section 17, page 235, Interim Report) to negate the rights of the nonreservation Indians is a gross inequity. It is inequity compounded upon inequity. It is obviously unfair to permit a Palm Springs Indian, rich in the possession of a valuable allotment, to share equally in any general fund with a poor Indian who has only a valueless brush patch to his name. Furthermore, it penalizes the nonreservation Indian who has taken the step toward integration with the general public. Many of the nonreservation Indians are as much in need of help as those on the reservations and

rancherias, and in spite of this some of them are attempting to pay taxes.

The authors of the legislation see an insurmountable obstacle to any attempt to adjust this situation. They speak of chaos and dispossession. However, neither of these would be necessary to an alleviation of the situation, as a little thought will show. Every avenue of approach should be explored, up to, but not including, actual dispossession. At least, any Indians such as the Palm Springs, Hoopa and the Tule River bands should be excluded from further participation in the judgment fund and in any general award made by the Indian Claims Commission, and activity on piecemeal legislation such as the Rancheria Bills and the Palm Springs Bill should be discontinued.

The question of the opposing rights of the two groups of Indians should first be settled in an equitable manner.

The present wording of Section 17 should be stricken. In its place it should suffice to provide that no Indian shall be dispossessed of any home that he has acquired through the proper channels, without due compensation. This, of course, would necessitate a number of other changes in the proposed legislation.

In connection with the foregoing, it should be noted that in Section 9, subsection d, 3, page 233, it is proposed that in distributing the assets of a tribe, band or group, deduction may be made for the value of any allotment held by any member of said tribe, band or group. Here we have an application of the very principle of distribution denied the nonreservation Indians.

It may be argued that the proposed termination legislation conforms to the Act of May 18, 1928 (45 Stat. 602) in which certain restrictions were placed upon the purposes for which the judgment fund could be used. However, in later legislation the Congress, at least tacitly, recognized the inequity of the restrictive provisions of the 1928 Act, when it provided for a per capita payment out of the judgment fund to each enrolled Indian. Thereby reducing the fund to less than a million dollars after deducting attorneys fees and the expense of making the per capita payments.

Turning now to the other provisions of the proposed legislation which relate primarily to the 7,000 to 8,000 Indians who reside on reservations, rancherias or allotments or have an interest in them.

As a general comment on the rancheria bills, it might save money to purchase outright whatever rights the Indians of several of the rancherias have and return the property to the public domain. There is also evidence that some of the rancheria groups that asked for termination are not satisfied with the purposes for which the estimated expenditures of termination are to be used.

The California Indian Appeals Board, Section 2, page 230, Interim Report. It is proposed to appoint an appeals board composed of three employees within the Department of Interior who are not in the Bureau of Indian Affairs. The establishment of this board is the result of a suggestion made by the Commissioner of Indian Affairs in response to a proposal made by the State for a panel of judges to be appointed by the Governor. However, the

Interim Committee still holds to the view that the legalistic approach to the problem is best. Be that as it may, it would seem that the board proposed by the bureau would amply take care of the situation. It is hard to believe that the Bureau of Indian Affairs would not deal impartially and justly with the Indians. Granted that some rather unusual concepts of ownership have sprung up in the Indian Service, would not any attempt to untangle this web result in endless controversy among the Indians? Any purely legalistic approach to the problem would draw out the termination program interminably and provide a Roman holiday for every unscrupulous attorney within striking distance of the reservation. In saying this I am not losing sight of the high ethical standards adhered to by the great majority of the members of the bar. There are many Gordian knots to be cut, and that requires broad understanding and mature judgment, coupled with moderation and a leaning to the liberal side in the marginal cases, rather than the exercise of technical ability.

Land Surveys, Section 4, page 230, Interim Report. The Secretary is directed to cause surveys to be made of the exterior and the interior lines of any Indian lands, and is authorized to enter into contracts with agencies outside the department to make these surveys. The Interim Committee seems to prefer the outside agencies, due to the time element. Notwithstanding this it should be mandatory on the Secretary to at least survey the exterior boundaries with the departmental forces and to bring into adjustment some of the weird surveys of the past. It would require considerable collaboration with the department for an outside agency to accomplish this.

Disposition of Buildings and Other Structures Located on Reservations and Rancherias, Section 8, page 232. This section should be clarified to clearly indicate that it applies to said buildings and other structures.

Guardians or Conservators, Section 9, Sub. h, page 233. This subsection provides for the appointment of guardians or conservators for Indians who are minors, non compos mentis or otherwise in need of assistance in conducting their affairs. No provision is made against excessive guardianship fees. Provision should be made for the creation of trusts or the purchase of annuities.

Special Program of Education, Section 10, page 234. This section provides for a special program of education to be administered by the California State Department of Education. Apparently it applies only to the reservation Indians and in that is another discrimination. Regardless of its application, its success is highly dubious. It is one thing to establish an educational program but it is a far more difficult thing to get the Indians to respond to it. Millions of the general public cannot meet some of the educational standards contemplated under this program for the reservation Indians. Included among these Indians is the hard core that would remain from any race or group that found itself barred from continuing its accustomed way of life by the march of events. The Indian children are now and for years have been receiving a public school education and will continue to

receive this advantage together with the non-Indian children. It is true that some Indians complain of the lack of an education. Many non-Indians make the same complaint. Both groups speak as though an education were something with which nature should have endowed them or that one could be acquired by a sort of mental osmosis, not seeming to realize that the acquisition of an education means years of application and self-denial. It is far easier to spend a few daylight hours in seeking tangible returns, lured on by the anticipation of an evening of relaxation and pleasure seeking. The most beneficial thing that can be done in the nature of an education for the Indians beyond school age, is to furnish them with a source of advice in meeting their problems. An employee with property management experience and training could be assigned from the Interior Department or from a state department to go from group to group, advising them and answering their questions. This would give far more effective help than the best educational program and is no different in principle from the farm adviser, home economics adviser and other services.

Training of Welfare Workers, Section 12, page 235. This section calls for a program of special training for welfare workers to furnish welfare service to the Indians. The record shows that Indians are already on the welfare rolls all throughout the State on equal footing with the non-Indians. The Indian need for help at this level is no different from that of any other citizen. Why the training program? Are the prospective applicants any different from the present beneficiaries?

Educational Foundation, Last Paragraph, page 241. Here we have the suggestion that moneys remaining in the judgment fund now being held for the California Indians in the U.S. Treasury could well be distributed to a nonprofit education foundation for the benefit of the Indians. Such action would be confiscatory and discriminative. Only a few Indians could take advantage of it. This fund belongs to all the Indians. They fought for it and it should be their right to dispose of it as they wish in the same fashion as the non-Indians. If the authors would reduce their suggestion to absurdity, let them try to impound the assets of any other group of citizens and force them to submit to an educational program in order to derive any benefit from their funds.

As a final comment it should be noted that no date is set as of which the various valuations contemplated shall be determined. All should be as of the same date. A short period of time can make a material change in the relationship between the values of different properties.

ROSA SUNDERLAND
Karak Indian

(Mrs. J. N. Sunderland)

The following is a resolution passed by the Owens Valley Board of Trustees regarding the General Termination Program. The reader will note that some of the problems raised in this resolution concern water problems discussed earlier in this report.

1. It is the opinion of the Owens Valley Board of Trustees that several actions should be taken before the Bishop Reservation is ready to discuss, plan or take action upon termination legislation.
 - a. We do not know for certain the status of our water rights with the City of Los Angeles should the present form of land ownership be altered in any way. Before it is possible to act on any plan of termination we should like the Department of Interior to take the case to court so that the status of the water rights can be ascertained once and for all.
 - b. We should also like to have the 66,620 acres of land known as the Paiute Indian Reservation, situated in Inyo and Mono Counties (T4 and T5, R31E, T4 and T5 and T6 R32E, M.D.B. and M.) be opened to use by the Paiute Indians as grazing land and that they be reimbursed for all grazing fees, mining royalties and the like received by the federal government since 1910 plus interest on this property. This land was paid for at \$1.25 per acre out of the money received by the Indians of California as a result of the court of claims decision, December 4, 1944. (Indians of California v. U.S. K-344.) The land obviously is the property of the Mono and Inyo County Paiute Indians since it was paid for although they have been denied the right to use it.
 - c. We need an economic survey of our lands so that we can profitably develop both the natural and business potential of our property before a program of termination is initiated.
 - d. Help is needed to develop an Indian Cattlemen's Association and to assist them in acquiring grazing leases from the Bureau of Land Management, City of Los Angeles, and the Forest Service. Many of our people are qualified to make it on their own if this kind of assistance can be secured.
 - e. It is difficult to take advantage of business opportunities because we have no way of obtaining initial capital. We should like the money on deposit with the Treasurer of the United States to the account of the Indians of California to be set aside as a revolving loan fund to be used for business, housing, and education loans.
 - f. It is felt that technical and legal advice is needed now to help us form organizations or legal entities needed to manage our affairs profitably before we became subject to heavy taxes which will be levied on the Bishop lands. Otherwise we will lose our land and others will profit from it.
2. We should like to make the following comments on the California State Termination Bill (H.R. 9512). The bill seems to be a good one except in the following details.
 - a. Section 5 which established the California Indian Water Affairs Commission may endanger our peculiar status in Bishop where the City of Los Angeles holds title to all subsurface water and mineral rights and by contract with the Department of Interior

agrees to furnish four acre-feet of water annually to reservations in Bishop, Big Pine and Lone Pine. There is still an open question as to whether the water goes with the land in the event the present status of the land is changed in any way. Should the City of Los Angeles be heavily represented on the Water Affairs Commission, our rights might easily be jeopardized. We understand that the City of Los Angeles will fight any attempt to provide water should the legal status of landholding change in any way. This matter should be taken to court and settled by the Department of Interior before we are ready for any termination program.

- b. We also feel that the whole program outlined in the California bill is too rapid a one to be completed in five years' time. We cannot really do any planning until the question of our water rights is settled. This might take several years and then we would be forced to carry out all of the other provisions of the act in too short a period of time.
- c. We should like to see many of the provisions of the act carried out before we are officially under any program of termination. We should like to suggest that the bill might be passed but that it would not become effective until such date as any band of California Indians should by their consent state that they are ready to complete the outlined program in five years' time. The date for the closing of the membership roll would be the date that ratification of the desire to enter into the provisions of the bill following consent of the tribe concerned is made by the Secretary of the Interior.
- d. We understand that on the Walapai Reservation and White Mountain Apache Reservations in Arizona, termination has actually taken place. The government still holds title to the land protecting these people from taxation and land sales. However, they are completely autonomous when it comes to managing their own affairs. We should like information on these plans as well as other possibilities of limiting our tax liability on Indian Lands. The Bishop reservation is good farming land but is also located in such a fashion as to be premium residential property. Most of our people will not be able to meet the tax load although the land was given to them as compensation for most of Inyo County which was confiscated from them. We also need information on the formation of a municipality or corporations to manage our affairs and would like legal assistance in working out a plan before we are forced to make the kind of decision required in Section 9 of the bill.
- e. We need considerable legal assistance in correcting our assignment procedures on the Bishop Reservation. We have been attempting to do this for almost 20 years and do not see how this can be done in five years. We should like to see this program attempted first, before we come under the bill's provisions.
- f. We should like to receive benefits under Section 10 prior to a termination program. We need trained people to develop our

leadership so that businesses can be started and carried through and also so that some of our people can qualify for skilled employment in the Bishop area. We would like to see our people here in Bishop be taught how to make a good living on their own so that we will not lose our lands because we do not have enough income to pay taxes. We do not like to see qualified families induced to leave the area because the relocation people say that there are better opportunities in the cities. We would like to see employment opportunities developed in our own communities.

- g. We make these comments because we want to have things worked out right. There is little other available land in Inyo County which is our traditional home. All property is high priced. We feel that the State of California and the federal government and the County of Inyo will save money if sufficient time is taken and sufficient assistance given to actually prepare us to make a living and manage our property. If we lose our land which is all we have, a large proportion of our people may end up on public welfare or because of discouragement in prison and homes for delinquent or homeless juveniles.

OWENS VALLEY BOARD OF TRUSTEES
February 20, 1958

Tom Gustie Jess Clifton Earl Lent Walter Bernard
Roy Chiatovich

In addition other interviews with leaders of the Indians in California expressed concurrence with some of the views set forth in the previous paragraph, disagreeing with some of the views and some divergent views of their own. Some suggested that the bill should include a revolving loan fund in order to aid the Indians in developing a sound economic unit with their property. Many thought that the time limit in the bill should be extended from five to ten years. Others thought there should be special provisions protecting elderly Indians from the possibility of losing any property they may receive through the termination program because of a failure to pay real property taxes.

V

MISCELLANEOUS PROPOSED AMENDMENTS
TO H.R. 9512

Because the various reservations and rancherias in the State differ so greatly in their physical and geographical makeup and in their possible economic development, H.R. 9512 provides that each individual reservation and rancheria shall be released from federal control under an individual plan tailored to meet its requirements. To facilitate the adoption of such a plan it has been felt that some method must be established to approve any such plan inasmuch as there will no doubt be honest differences of opinion as to the most suitable plan in any given instance.

Section 9(f) of H.R. 9512 contained a provision that, generally, stated that if the Indians could not agree to a plan promulgated by the Secretary of Interior, then the plan would be submitted to Congress.

The language in this section had been the subject of some controversy and discussion. Therefore Mr. John A. Bohn, counsel for the committee, circulated a proposed amendment and rewording of this section. Set forth below is a letter dated March 6, 1959, directed to Mr. Bohn from the Department of Interior which summarizes the present wording of Section 9(f), the proposed amendment, and the department's views.

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

WASHINGTON 25, D.C., March 6, 1959

DEAR MR. BOHN: In your letter of October 16, 1958, addressed to Mr. Rex Lee you asked for our views regarding a suggestion to revise subsection 9(f) of the proposed California Indian termination legislation before the State seeks its introduction in the 86th Congress.

As submitted to the 85th Congress the subsection read:

“(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall be submitted by the Secretary to the Speaker of the House of Representatives and the President of the Senate, and such plan shall be carried out unless it is disapproved by concurrent resolution of the Congress within one calendar year after such submission.”

The suggested revision quoted in your letter is:

“(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall be submitted by the Secretary to the Speaker of the House of Representatives and the President of the Senate for such action as Congress deems appropriate.”

In view of Secretary Seaton's announced position on termination legislation, we believe that it would be preferable to make the subsection read:

“(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall not be carried out.”

A copy of our letter to Mr. Towner regarding the water provisions of the bill is enclosed for your information.

In accordance with a prior request of yours, we have reviewed the explanatory statement which you proposed to accompany H. R. 9512, 85th Congress. We have no suggestions to offer, and believe that it is both a fair presentation and free of technical errors.

Of course any revisions that are made in the bill before it is offered for reintroduction will need to be reflected in the explanation. In that connection, I understand that when Mr. Lee and Mr. Sigler met with you on September 25, 1958, in Sacramento the department's position on a few of the details of the bill were discussed. Some of the amendments which the department planned to offer you indicated were acceptable and would be included in the new bill; a few others you were unable to accept and it is understood that we will present them to Congress to decide. These do not go to the essence of the bill, however, and do not involve any question about the basic approach.

If the State through its congressional delegation seeks the early introduction of the proposed legislation, we shall co-operate fully in seeking an early hearing.

Sincerely yours,

ROGER ERNST
Assistant Secretary of the Interior

VI

MISCELLANEOUS

Since the committee was established, and its existence became well known to Indians throughout the state, the committee has received a great deal of correspondence concerning matters that were really beyond its jurisdiction or were at least marginal in that respect. In all cases the committee, through its counsel and executive secretary, attempted to assist the inquiring persons either by gathering information itself or by forwarding the request to the proper agency of the Federal Government. The inquiries ranged from requests for information about Indian situations in Oklahoma and other states, to matters of some substance concerning California Indians.

As an example of some of the co-ordinating work along this line that has been done by the committee this report will set forth below a series of correspondence concerning two rather substantial questions. The first concerns a sixty-six thousand acre tract of land in Mono and Inyo Counties that appeared on some old maps as an Indian reservation but could not in fact be located physically. The other matter concerned a parcel of land near Fort Independence, Inyo County, which was granted to the City of Los Angeles by the Federal Government in conjunction with a land exchange discussed earlier in this report. The question was raised by the Indians in the Fort Independence area that this particular parcel was erroneously contained in the conveyance to the City of Los Angeles.

(A) MONO BASIN PROBLEM

July 16, 1958

MR. LEONARD HILL

*Bureau of Indian Affairs, Federal Building,
Sacramento, California*

DEAR MR. HILL: This will confirm our conversation regarding the acute problems of the Mono Basin Indians insofar as land ownership and use is concerned.

You will recall that at one time some 66,000 acres of land was set aside for the use of these Paiute Indians and we are informed that this was done by executive order in 1912. However, we understand that the land was never actually allocated to these Indians nor were they permitted to use the same. Also, for reasons which have never been quite clear, the land was later withdrawn from possible Indian use.

I am further informed that despite the facts that this 66,000 acres of land was retaken by the federal government for its own use, nevertheless the Indians of California were charged for the full amount at the rate of \$1.25 per acre at the time of the claims settlement action.

In the course of these events, the Mono Basin Indians have been the major victims of this changing policy. As a consequence

they have never received any land of any kind or character from the federal government nor have they received any other benefit from the federal government except, of course, individual prorata shares from the Indians Claims Fund. To further aggravate the situation, these Indians are in an area where nearly all of the land is either owned by the City of Los Angeles for water purposes or is owned by one branch or another of the government of the United States. Accordingly, they are not even able to buy property, assuming that they are financially able to do so.

The purpose of this letter therefore, is to request the assistance of the Bureau of Indian Affairs to remedy this unfair situation. Perhaps it may be possible with the help of your department to obtain public domain or forest service allotments for these Indians which would compensate in some measure for the losses they have suffered.

For example, I have been informed there is something over two million acres of public domain land in the area but that all of these lands are withheld by the Bureau of Land Management for watershed use. However, it has been stated that the government needs for this purpose are shortly to be re-examined with the possibility of the release of some of these lands for public domain allotment purposes. I know that the Indians of Mono Basin area would very much appreciate the good offices of your department in urging the release of some of these lands for use by the Indians in the area and would appreciate being kept fully informed of the developments.

In addition I understand that there is a considerable amount of forest service land in the area which also might be made available to the Indians upon application under the general provisions applicable to forest service lands. I understand that in the event the land is not timber land or suitable for timber use, it may then be released upon application of individual Indians for some suitable homestead or agricultural purposes.

I understand that, particularly as to the forest service land, the Indians must make application on an individual basis. However, they have no maps or other information which they can use to determine lands available for this purpose and I would therefore particularly appreciate your obtaining this information and these maps so that the Indians themselves may look over the material and otherwise take such preliminary steps as may be necessary to submit their applications to the Department of Agriculture.

Your co-operation will be very much appreciated.

Sincerely,
(signed)

CHARLES BROWN
Senator 28th District

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
SACRAMENTO AREA OFFICE
SACRAMENTO 4, CALIFORNIA (Stamped August 12, 1958)

HON. CHARLES BROWN
California State Senator
State Capitol, Sacramento 14, California

DEAR MR. BROWN: We have your letter of July 16, 1958, concerning certain problems involving the Mono Basin Indians living in the vicinity of Lee Vining, California. We inadvertently filed your letter without having made a reply, which action we sincerely regret.

We wrote to the office of the Commissioner, Bureau of Indian Affairs in Washington, D.C., with regard to what action that office was taking in connection with the charge made against the Indians of California for land which they did not receive, as this matter had been called to their attention before. We have been advised that the Department of the Interior has drafted remedial legislation to pay the Indians in California for the value of land erroneously used as an offset and such legislation is now being reviewed in the secretary's office. As soon as the Bureau of the Budget clearance is obtained and the proposal transmitted to Congress, you will be furnished copies of the bill and the transmittal letter.

The problem of obtaining an Indian allotment on the public domain is governed by Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389). This section provides in part as follows:

"Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided for Indians residing upon reservations * * *"

Thus, the land must be vacant public domain land not under a withdrawal order.

The act of March 1, 1933 (47 Stat. 1418) provides that lands withdrawn under the Taylor Grazing Act are not subject to settlement under the above section until such settlement has been authorized by classification of the land as suitable for allotment. In California, at the present time, there is very little vacant public domain land which is suitable for settlement. The records of such lands, if any, are maintained at the local offices of the Bureau of Land Management throughout the State and it is incumbent upon the person seeking land to locate it.

However, we have been informally advised by the Bureau of Land Management that certain lands in the Mono Basin, which

have been withdrawn for watershed protection, are being re-evaluated and a probability exists that this withdrawal will be revoked in part, which will have the effect of restoring such withdrawn land to the public domain.

Allotments in the national forest are governed by Section 31, the act of June 25, 1910 (36 Stat. 863):

"The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided."

Under the above section you will note that to obtain an allotment in the national forest it is necessary that an Indian have made prior settlement on the land.

Sincerely yours,

GUY ROBERTSON
Area Director

September 30, 1958

MR. LEONARD HILL

Bureau of Indian Affairs

Federal Building, Sacramento, California

DEAR MR. HILL: Thank you for your letter of August 12, 1958 in which you outlined the actions that have been taken regarding the withdrawal by the Federal Government of the 66,000 acres of land in the Mono Basin, and in which you reviewed the avenues open to the Indians of that area for the acquisition of land.

After a study of the background of this problem, I can only conclude that the presently available solutions are grossly inadequate and inequitable. I realize that these inadequacies are not of your making, but it is your office that must be primarily responsible for the correction of the situation or the failure to do so.

The reasons that I feel that these solutions are inadequate, and my suggestions for improving the situation are listed below. I strongly urge you to investigate these matters to see if a just and satisfactory conclusion can be reached.

1. The legislation now being drafted to make restitution for the 66,000 acres will, as I understand it, cause the payments to be made

to the Indians of California. If the fund is to be divided among all Indians, the Mono County Indians will receive a nominal sum each as will all other Indians in the state. The sum will be small enough that no one will benefit from it and the Mono Indians will still be without land. The only equitable solution could be one which would provide that the restitution sum, or a major part of it, be paid to the Mono Basin Indians. I realize that this suggestion may require special legislation, but I feel that your Bureau should investigate its possibilities.

2. There is, at present, no land in the area available under the General Allotment Act of February 8, 1887 (24 Stat. 389) in that it has been withdrawn for watershed purposes. You have indicated that the Bureau of Land Management is re-evaluating its withdrawal program and that there is a possibility that some land will be released and therefore become available under the General Allotment Act. The Indian Bureau should do everything it can to impress upon the Bureau of Land Management the importance of releasing some of this land.

I would appreciate it if you would inform me of the person or persons in charge of this re-evaluation in order that I may express myself directly to them and receive information of the progress made and of the final results of the investigation.

3. The possibility of obtaining land in the national forests through the Act of June 25, 1910 (36 Stat. 863) though open to the Mono Basin Indians, is rather impractical. It requires that the Indian settle on the land on speculation that the land will be declared to be more valuable for agricultural purposes than for forestry purposes. I know that some of the Mono Basin Indians have investigated the procedure under the Act and have received no satisfaction.

The results of my analysis show that the Mono Basin Indians, through no fault of their own, have been caught in a very unfortunate situation which ordinary procedures cannot rectify. I am therefore urging you to investigate the possibility of adopting some extraordinary procedures as outlined in paragraphs 1 and 2 above to rectify this inequity.

If there is anything that you can do along the lines suggested, my staff is at your disposal and is by this letter instructed to give you all possible assistance. It goes without saying, of course, that I personally stand ready to assist you in every way possible.

I will be contacting you from time to time to ascertain the progress made through your studies of this situation. If you discover any other equitable solution, or possibilities of other solutions, please relay them to me so that they can be evaluated in advance by this office.

Your co-operation in this matter will be deeply appreciated.

Very truly yours,

CHARLES BROWN, Senator, 28th District

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

SACRAMENTO AREA OFFICE

SACRAMENTO 4, CALIFORNIA, November 24, 1958

HON. CHARLES BROWN

*California State Senator**State Capitol, Sacramento 14, California*

DEAR SENATOR BROWN: Reference is made to your letter of September 30, which comments on our letter of August 12 and our acknowledgment of October 7 regarding the possibility of acquiring lands for landless Indians of the Mono Basin in Mono County, California. You list three possible solutions to the problem and recommend that this office explore the possibility of adopting some extraordinary procedures to relieve this situation.

First, concerning the proposed legislation to rectify the erroneous offset made from the claim allowed to the California Indians in the suit entitled "The Indians of California vs. the United States," Court of Claims, K-344, the Department of the Interior has acknowledged that an error was committed in offsetting the value of the 66,000 acres against the award to the Indians of California and has agreed to sponsor legislation to restore the amount of the offset to the Indians of California. It is true that the Indians in question would receive only a nominal sum for the restitution of 66,000 acres mentioned in your letter. In all instances of offsets, however, the Indians of California were treated as a group and in no case where specific bands or groups suffered losses were they compensated as individual bands. Therefore, it would be inconsistent and unfair to make special indemnification of the Mono County Indians for the loss of the 66,000 acres or any disproportionate amount thereof. The Congress, of course, through special legislation could depart from the established approach to the problem.

By an executive order dated May 9, 1912, the 66,000 acres of land in question were "temporarily reserved from settlement, entry, sale or other disposition, until their suitability for allotment purposes to homeless Paiute or other Indians living on or adjacent thereto may be fully investigated." An executive order of April 28, 1932, revoked the withdrawal of this land along with other lands. The basis of the revocation was the fact that the lands were determined to be unsuitable for allotment purposes due to the fact that they were rough and rocky and could not be successfully cultivated. The land never attained the status of a reservation but was only temporarily withdrawn from settlement, entry, sale or other disposition.

Restoration of the land to reservation status in our opinion would not benefit the Mono County Indians to any noticable extent since the land is still unsuited for settlement because of its physical character. Furthermore, the Paiute Indians in the Owens Valley have asserted claims to this area which may well have some validity. Another fact to be taken into account is at least a number

of the present Mono County Indian people are not enrolled as California Indians and some probably originated in Nevada.

Second, regarding the re-evaluating of the withdrawal program by the Bureau of Land Management which would probably make some land within the Mono Basin available for allotment to the nonreservation Indians under the General Allotment Act, the person in charge of the investigation is under the supervision of Mr. Raymond R. Best, State Supervisor, Bureau of Land Management, Fourth and J Streets, Sacramento. Mr. Best has indicated that this investigation will be completed in from 12 to 18 months.

Third, regarding the possibility of the Indians obtaining allotments in the national forest, the determination of whether land in the forest is found more suitable for agricultural purposes than for other purposes is a function of the U.S. Department of Agriculture through its Forest Service. The act of June 25, 1910, was designed primarily to protect the rights of Indians living on the land when such land was included within the boundaries of national forests. In our opinion its purpose was not to permit Indians to settle on the National Forest lands after the creation of the forests.

It is the policy of the bureau in California to conform to the mandate of Congress as expressed in House Concurrent Resolution No. 108 passed July 27, 1953. This resolution states:

"That it is declared to be the sense of Congress that at the earliest possible time, all of the Indian Tribes and individual members thereof located within the States of . . . California . . . should be freed from federal supervision and control from all disabilities and limitations especially applicable to Indians. . . ."

Aside from keeping the Indians informed of the availability of public domain land which may be allotted under existing authority, we see no particular remedy for the plight of the Mono Basin Indians. There are numerous landless Indians in California, perhaps two-thirds of the total Indian population, who have never been provided with land by the federal government whose situation is similar to that of the Mono County people. The fact that the City of Los Angeles has purchased practically all of the privately owned land in the general area for watershed purposes increases the difficulties of the Mono County Indian people. Nevertheless, it is not believed that there is justification for the Department of the Interior to sponsor legislation to provide these Indians with land since such action would be contrary to our overall program in California.

I am forwarding copies of your letter and my reply to our central office and asking that it relay any contrary views to me and will inform you of any further developments.

Sincerely yours,

LEONARD M. HILL
Area Director

(B) THE FORT INDEPENDENCE PROBLEM

October 5, 1958

H. REX LEE, Esq.

*Acting Commissioner of Indian Affairs**Department of Interior**Washington, D.C.*

DEAR MR. LEE: Confirming our recent discussion at Sacramento, the following is a summary of the factual information regarding the claim made by the Fort Independence, California, Indians that 600 acres of land belonging to them was erroneously conveyed to the City of Los Angeles in the Owen Valley land exchange agreement between that city and the federal government.

The exchange was authorized by special legislation in 1937 and actually took place in 1939. Section 3 of the 1937 enabling act reads as follows:

“No tribal land shall be involved in any such exchange except with the consent of a majority of the adult Indians entitled to the use thereof...”

Prior to the exchange, because of the above quoted section, petitions were circulated among the Owens Valley Indians. The Bishop, Big Pine, and Lone Pine Indians all approved the exchange but the Fort Independence Indians overwhelmingly rejected it. Thus, when the exchange was consummated in 1939, the Fort Independence Indians remained on the land they had been occupying and the Indians of the other three areas moved to the new sites received from Los Angeles through the trade and the federal government conveyed to the City of Los Angeles the land which had been held for the Indians of those three areas, that is, the Bishop, Big Pine, and Lone Pine areas.

It came to the attention of the Fort Independence Indians that a 600-acre tract near Independence was included in the land conveyed to Los Angeles. No Indians were residing on this 600-acre tract and, in fact, the Fort Independence Indians did not know it existed.

At the time the California Senate Interim Committee on Indian Affairs held its hearings in the Bishop area this problem was discussed. The land trade itself is discussed on page 288-300, 310 of the 1955 committee report, and this particular 600-acre tract is discussed on pages 317, 318, 322. At the time those hearings were held it was not known whether those 600 acres were held for a specific group of Indians or not. (See Mr. Hill's statement, page 322 of the report.)

However, since that time the Fort Independence Indians have looked into the matter and have sent to this office photostatic copies (one of which is enclosed) of an Indian land report which shows that in addition to the 320 acres now occupied by the Fort Independence Indians an additional 600 acres was acquired *for the Fort Independence Reservation*. See column II, III, and IV of the enclosure.

To summarize, the Fort Independence Indians feel that 600 acres of their land were granted to the City of Los Angeles, that such grant was unauthorized without the approval of the Indians themselves, that such approval was not given, and that they have received no consideration for the 600 acres. This claim is documented by the section of the enabling act quoted above and the enclosed Indian property listings.

I would appreciate it if you would investigate this matter and advise me of the results thereof. It would certainly seem that some remedial action should be taken.

Very truly yours,

JOHN A. BOHN

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
WASHINGTON 25, D.C., November 5, 1958

MR. JOHN A. BOHN

Counsel and Executive Secretary

Senate Interim Committee on California Indian Affairs

Benicia, California

DEAR MR. BOHN: We appreciate receiving your letter of October 5, concerning the claim of the Fort Independence Indians to 600 acres of land that was conveyed in 1939 to the City of Los Angeles by the Owens Valley Land Exchange agreement.

By executive order dated March 11, 1912, certain lands in Owens Valley, including 600 acres described as all of Sec. 34, except the NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, T. 12 S., R. 34 E., Mount Diablo meridian, were received from settlement and "set aside for allotment purposes to the Indians located thereon and for such other uses as may be lawful for the benefit of the Indians."

Three years later, the Camp or Fort Independence Reservation was established by the executive order of October 28, 1915, for the "Camp or Fort Independence Indians entitled to allotments thereon." This reservation comprised 320.40 acres. A similarly-worded executive order, dated April 29, 1916, added another 40-acre tract to the reservation.

Before the Owens Valley Land Exchange was completed in 1939, it had been determined that with the exception of the Fort Independence Reservation established in 1915, none of the parcels to be exchanged were held in trust for any particular group of Owens Valley Indians, it being the view of the department that all the groups in Owens Valley, except the Fort Independence Indians, had the right of beneficial use of the land. In fact, the Fort Independence Indians do not assert that they are the "Indians located thereon" within the meaning of the 1912 executive order, nor do they assert that they have ever occupied any of the tract in question. They have admitted that they did not know the acreage existed until after it was transferred to the city. According to our records, the land was barren and no Indians were living on it at the time of the exchange.

In accordance with Section 3 of the act of April 20, 1937 (50 Stat. 70), every effort was made by our field office to personally contact all of the Indians entitled to the use of the land that was deeded to the city in the exchange. Of the 353 adult Indians eligible to consent or withhold their consent to the exchange, which, of course, excluded the Fort Independence group who did not wish to participate, 211 signatures were obtained. This was considerably in excess of the number needed.

Our records indicate that although the Fort Independence Indians claim that land in their vicinity was taken in the land exchange, they did admit, in a meeting held October 28, 1950, that the lands were not a part of the Fort Independence Reservation. It appears that the close proximity of the tract to their reservation is their only basis for claiming the land.

The statistical table submitted with your letter was taken from a 1935 publication of the National Resources Board, based upon the sources listed therein. Without doubt, the 600 acres shown in column III, as being a part of the Fort Independence area, is in error. This probably occurred because of its nearness to the Fort Independence Reservation. That the 600 acres should have been listed under Scattered Bands is obvious, as it was a part of the area reserved by the March 11, 1912, executive order, and there is nothing in our records to indicate that it was ever turned over to the Fort Independence Indians.

In view of the foregoing, we are of the opinion that all aspects of the transfer were carried out in accordance with the act of April 20, 1937, *supra*, and that the Fort Independence Indians have no valid claim.

This matter has been the subject of inquiries by both Mr. Robert Cromwell, Executive Representative of the Indians of California, Inc., and Mr. Vernon J. Miller of Independence, California.

If we can be of any further assistance to you, please let us know.

Sincerely yours,

H. REX LEE
Associate Commissioner

VII

CONCLUSIONS AND RECOMMENDATIONS

The committee has, as it did in 1957, again reviewed the recommendations and conclusions contained in the report of the Predecessor Committee issued in 1955. This committee believes, as did its predecessors, that the pattern set forth in the 1955 report is sound and if followed would provide for orderly and equitable termination of the federal control of California Indian affairs. The suggested amendments to the Federal Termination Bill as introduced, and the suggested supplementary state legislation, do not change the overall pattern described in the conclusions of the prior reports.

(A) STATE LEGISLATION

The supplementary state legislation concerning Indian water rights, which has been discussed throughout this report, was introduced in the State Legislature this session, designated S.B. No. 10 and S.B. No. 11. Both were passed, and S.B. No. 10 was approved by the Governor on May 27 as Chapter 636 of the California Statutes of 1959. S.B. No. 11, however, was vetoed on May 25, 1959. The veto did not relate to the principles embodied in S.B. No. 11, but rather to technical problems which it is expected can be corrected in future legislation.

It is this committee's recommendation that S.B. No. 11 be repassed after it is amended to provide for the technical objections which led to the veto. These amendments will be made as soon as it is possible to confer with the Governor to acquire the specific information needed for satisfactory amendment. It was not possible to accomplish this prior to the printing of this report, and therefore S.B. Nos. 10 and 11 are set forth below in the form passed.

SENATE BILL NO. 10

Passed the Senate April 8, 1959. Passed the Assembly May 13, 1959.

CHAPTER 636

An act to add Section 1241.5 to the Water Code, relating to Indian water rights.

The people of the State of California do enact as follows:

SECTION 1. Section 1241.5 is added to the Water Code, to read:
1241.5. The laws of this State with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence shall not apply to water rights appurtenant to or for use on any trust land for the period of five years following the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land.

As used in this section, "trust land" means any land in this State (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular In-

dian; or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such land is occupied by Indians or their families.

The Legislature hereby finds and declares that because of historical conditions, the Indians of California will not be in a position fully to utilize and to protect water rights owned by them when unrestricted title to trust land is conveyed to them by the United States. A period is required during which the laws with respect to loss of water rights by nonuse, abandonment, prescription, and lack of diligence are suspended with regard to such land and water rights so that they will not lose the benefit of the water rights and the opportunity to make productive utilization of their land. The Legislature further finds and declares that such a suspension of the laws of this State with regard to such water rights is in the public interest and will promote the public welfare since it will promote the economic and social well-being of the Indians and the communities in which they reside and will encourage the self-sufficiency of the Indians.

This section shall become operative upon the enactment of federal legislation authorizing the establishment of a California Indian Water Affairs Commission.

SENATE BILL NO. 11

Introduced by Senator Brown

January 7, 1959

REFERRED TO COMMITTEE ON WATER RESOURCES

An act to add Chapter 2.5 (commencing at Section 2200) to Part 3 of Division 2 of the Water Code, relating to Indian water rights.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.5 (commencing at Section 2200) is added to Part 3 of Division 2 of the Water Code, to read:

CHAPTER 2.5. USAGE OF WATER BY INDIANS

2200. In connection with the termination of federal supervision over Indians in California and the transfer of trust Indian land from the United States to such Indians subject to the full jurisdiction of the State of California, it is hereby declared to be in the public interest to determine facts relative to the usage of water and the water rights of such Indians in order that such rights might be conserved and the Indians better enabled to take their places as self-supporting citizens of the State of California. The California Indian Water Affairs Commission, or such other federal-state agency as may be established to consider water usage and water rights applicable to trust Indian land prior to the termination of federal supervision over Indian affairs in California, may file its findings of facts in the office of the recorder in the county

where the land is located. Such findings of fact shall be prima facie evidence of such facts in any proceeding before any court or agency of this State wherein status of an Indian water right is in issue. Such findings of fact shall not be regarded as an adjudication of an Indian water right.

As used in this section "trust Indian land" means any land in California (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian; or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States; or (c) held by the United States for the use of Indians in California, but not for any particular Indian, if any part of such land is occupied by Indians or their families.

LEGISLATIVE COUNSEL'S DIGEST

S. B. 11 as introduced, Brown (Wat. Res.). Usage of water by Indians.

Adds Ch. 2.5 (commencing at Section 2200), Pt. 3, Div. 2, Wat. C.

Authorizes the California Indian Water Affairs Commission, or any similar agency established, to file findings of facts re water usage and rights applicable to trust land prior to termination of federal supervision over Indian affairs in California with the recorder in the county where the land is located. Makes such findings of facts prima facie evidence of such facts in any state judicial or administrative proceeding re Indian water rights, but provides that they are not to be regarded as an adjudication of an Indian water right.

(B) FEDERAL LEGISLATION

This committee, as did its predecessors, believes that in order to have effective implementation of the cumulative recommendations of the committee there must be federal legislation to provide termination of federal supervision over Indians in California on a statewide basis. Such a bill should provide not only for the ultimate termination but should specifically outline the steps which must be taken by the Bureau of Indian Affairs in order to attain the objective. Naturally the text of such a Federal Bill is purely a question of federal policy and is not within the scope of control or jurisdiction of this committee. However, the committee feels that its investigations over the years have given it a special insight into the myriad problems connected with such a program and therefore feels that it is in a position to draft legislation which would effectively attain the announced objective of Congress, that is, the determination of federal control of Indian land in this State, doing it in a manner which would permit the transition to be effected as smoothly and equitably as possible.

Therefore, this committee recommends to the Congress of the United States that the bill set forth below will provide for the orderly termination of federal supervision of Indians in California.

A BILL

To provide for certain preliminary actions that need to be taken before Federal supervision over Indian affairs in California can be terminated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the membership of each tribe, band, or other group of Indians in California for

which the United States holds title to property in trust, or which owns property subject to restriction against alienation imposed by the United States, shall be closed as of midnight of the date of the enactment of this Act, and no child born thereafter shall be eligible for membership. A membership roll for each such group shall be prepared in accordance with regulations governing procedures, time limitations, and eligibility requirements prescribed by the Secretary of the Interior (hereafter called the Secretary), after consultation with the Indians affected, notwithstanding the eligibility requirements prescribed in any tribal constitution or other provision of law. General notice of proposed regulations shall be given and interested persons shall be afforded an opportunity to present their views and arguments to the Secretary before the regulations are issued. The procedures included in such regulations shall provide for the publication in the Federal Register of a proposed roll of the members of the group who are living at midnight on the date of this Act, and for the right to file an appeal with the California Indian Appeals Board, appointed pursuant to section 2 of this Act, contesting the inclusion or omission of the name of any person on or from such roll. The California Indian Appeals Board shall review such appeals, giving due consideration to the recommendations given and evidence adduced, and the decision of the board thereon shall be final and conclusive. Before making a decision the board may recommend that the Secretary modify the eligibility requirements previously established. After disposition of all such appeals, the roll shall be published in the Federal Register and shall be final. The provisions of this section shall create no individual property rights in the property of such groups.

SEC. 2. The Secretary shall establish a board to be known as the California Indian Appeals Board which shall be composed of three employees within the Department of the Interior who are not in the Bureau of Indian Affairs.

SEC. 3. The Secretary is directed, within the limits of available appropriations, to complete as rapidly as possible the construction or improvement of roads within Indian reservations in California or that provide access to Indian reservations or Indian lands in California in accordance with plans that will permit the transfer of such roads to the State or local government. The Secretary is authorized to contract with the State of California or any political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government, the Secretary is authorized to convey to the State or local government rights-of-way for such roads, including any improvements thereon. A right-of-way over Indian trust or restricted land for a road heretofore constructed with the consent of the Indian owner, or a right-of-way over federally owned land that is not held for the use of any particular Indian tribe, band, or group, and is not occupied by an Indian

owner or which has not been improved by an Indian owner, may be conveyed without compensation. Other rights-of-way shall be conveyed after payment by the Secretary to the Indian owner of reasonable compensation.

As used in this section, "Indian owner" includes any Indian or member of his family who holds land by allotment or assignment from the United States, by assignment from any Indian tribe, band, or group, or who has occupied such land for a period in excess of five years or who has placed improvements on the same.

SEC. 4. The Secretary is directed to cause surveys to be made of the exterior or interior boundaries of any trust or restricted Indian lands in California to the extent that such surveys are necessary or appropriate for the termination of the Federal trust or the removal of Federal restrictions and for the conveyance of marketable titles to the lands. Such surveys shall be completed within five years after the effective date of this Act.

The Secretary is authorized to enter into a contract or contracts with the State, any political subdivision thereof, or any private corporation or agency to conduct the surveys required by this section.

SEC. 5(a). There is hereby established a commission to be known as the California Indian Water Affairs Commission (hereinafter called the Commission) which shall be composed of one member appointed by the Secretary of the Interior, one member appointed by the Governor of California, and one member selected by the other two members. The Commission shall by regulation provide opportunity for a representative of the tribe, band, or group of Indians involved to participate in proceedings involving the usage and rights of such group, or its members. The Commission shall elect from its membership a chairman. The members of the Commission shall receive no salary as a result of their membership on the Commission, but they may be paid for necessary expenses authorized by the Commission, including their travel and subsistence expenses while engaged in Commission activities.

(b) The function of the Commission shall be to collect information and based thereon make findings of fact pertaining to water use and water rights, including presently defined rights, for trust Indian land in California, as hereinafter defined. Information gathered may include any matter relevant under Federal or State law. The Commission shall adopt reasonable rules of procedure which may include all or part of the procedures set forth in the California Water Code in connection with the ascertainment and determination of water rights. The Commission shall cause its findings of fact to be recorded in the county where the land is located and to be filed with the Secretary of the Interior and the administrative agency of the State of California vested with functions relating to adjudication of water rights. Said findings of fact shall be prima facie evidence of such facts in any proceeding wherein status of an Indian claim of water right is in issue within the

jurisdiction (1) of any court or agency of the United States and (2) to the extent provided by State law, of any court or agency of the State of California. No action taken pursuant to this section shall be regarded as an adjudication of an Indian water right.

As used in this section, "trust Indian land" means any land in California (a) to which the United States holds title in trust for any tribe, band, or other group of Indians, or for any particular Indian, or (b) owned by a particular Indian or any tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States, or (c) held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians or any particular Indian, if any part of such land is occupied by Indians or their families.

(c) The Commission is authorized, without regard to laws and procedures applicable to Federal agencies, to procure services, supplies, and property, to enter into contracts with any Federal, State, or other public or private agency or individual, to hold hearings, to take any other action necessary to carry out its functions, and to incur necessary expenses in an amount not exceeding \$300,000 over a period of five years. There is authorized to be appropriated \$75,000 for the fiscal year in which the Commission begins its operations, and such amounts as may be necessary for succeeding fiscal years. An Executive Officer selected by the Commission shall pay the expenditures authorized by the Commission, keep complete records of all expenditures, and account for such expenditures in the reports of the Commission.

(d) The Commission shall submit to the Secretary of the Interior and to the Governor of California progress reports from time to time, and a final report not later than five years from the date of this Act or as soon thereafter as the accomplishment of work provided for under this section will reasonably permit. The Commission shall terminate with the submission of its final report. The Commission may include in any of its reports recommendations for further State or Federal legislation.

(e) Before making the conveyances authorized by the Act of August 18, 1958 (72 Stat. 619), or by any subsequent legislation providing for the distribution of the property of Indian rancherias and reservations in California, the Secretary of the Interior shall consider the findings of fact of the Commission and make use of its reports and data in such way as in his judgment will best protect and preserve the water rights applicable to property being distributed in a manner compatible with both Federal and California law.

(f) Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States, or shall prejudice its priority. For a period of ten years after the conveyance pursuant to this Act of an unrestricted title to any land and appurtenant water right, the Attorney General shall represent the Indian owner

in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

(g) Section 4 of the Act of August 18, 1958 (72 Stat. 619), is hereby revised to read as follows: Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States, or shall prejudice its priority. For a period of ten years after the conveyance pursuant to this Act of an unrestricted title to any land and appurtenant water right, the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

SEC. 6. (a) The Act of June 25, 1910 (36 Stat. 855), the Act of February 14, 1913 (37 Stat. 678), and other Acts amendatory thereto shall not apply to the probate of the trust and restricted property in California belonging to individual Indians who die after the date of this Act.

(b) The laws of the several States, Territories, possessions, and the District of Columbia with respect to the probate of wills, the determination of heirs, and the administration of decedents' estates shall apply to the property in California belonging to individual Indians who die after the date of this Act.

SEC. 7. Any owner of an interest in any tract of land in California in which any undivided interest is now or is hereafter held in trust by the United States for an Indian, or is now or is hereafter owned by an Indian subject to restrictions against alienation imposed by the United States, may commence in a State court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States.

SEC. 8. The Secretary is authorized to convey without consideration to any tribe, band, or other group of Indians in California, or a member thereof, or to a corporation or legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property acquired, withdrawn, or used for the administration of Indian affairs in California and no longer needed for such purposes.

SEC. 9. (a) Each tribe, band, and other group of Indians in California for which the United States holds title to property in trust or which owns property subject to a restriction against alien-

ation imposed by the United States, or the Secretary after consultation with such Indians, shall prepare a plan for distributing or disposing of such property by allotment thereof on an individual or family basis to the enrolled members and to any other Indians or members of their families who have occupied the land for five years or more with the expressed or tacit consent of such group, by conveyance thereof to a corporation or other legal entity organized or designated by the enrolled members and said occupants, by conveyance thereof to the enrolled members and said occupants as tenant in common, or by the sale thereof and distribution of the proceeds of sale among the enrolled members and said occupants. When preparing the allotment portion of any plan, due consideration shall be given to the nature of the use and occupancy of the land, prior assignments, the size of the Indian family, the improvements made by the Indian family, the social and economic consequences of disturbing existing occupancy patterns, and the suitability of the land for individual ownership.

(b) The Secretary, after consultation with the Indians affected, shall prepare a plan for distributing or disposing of the property held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, if any part of such property is occupied by Indians or their families, by allotment thereof to individual Indians or their families, by conveyance thereof to a corporation or other legal entity organized or designated by the Indians or families who receive allotments, by conveyance thereof to the Indians or families who receive allotments as tenants in common, or by sale thereof and distribution of the proceeds of sale among the Indians or families who receive allotments. When preparing the allotment portion of any plan, the Secretary shall give due consideration to the factors named in subsection (a) of this section.

(c) Any property that is held by the United States for the use of Indians in California, but not for any particular tribe, band, or group of Indians, or any particular Indian, and that is not occupied in part by Indians or their families, shall be sold by the Secretary and the proceeds of the sale shall be deposited in the Treasury of the United States to the credit of the account heretofore established for the Indians of California as defined in the Act of May 18, 1928 (45 Stat. 602), as amended.

(d) Any plan prepared pursuant to subsection (a) or (b) of this section shall provide that all reimbursable irrigation operation, maintenance, and construction costs chargeable against the land involved or against trust or restricted property belonging to individual members of the group, and all assessments heretofore or hereafter imposed on account of such costs, shall be canceled by the Secretary.

Any such plan shall also provide that:

(1) Specified roads, water facility, soil conservation and other improvements on tribal or other land held in trust shall be com-

pleted before the distribution or disposition of the land is completed.

(2) All trust or other restrictions on the ownership or control of land owned by individual members of the Indian group involved shall be removed.

(3) The value of any allotment at the time it is made pursuant to this section, and the value of any other allotment at the time it was made pursuant to other provisions of law, may be deducted from the shares of the allottee or his successors in interest at any time any per capita distribution is made of other assets of the tribe, band, or group.

(e) General notice shall be given of the contents of a plan that is prepared pursuant to subsection (a) of this section and that is approved by the Secretary, or a plan prepared pursuant to subsection (b) of this section, and any person affected who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments before the California Indian Appeals Board established pursuant to section 2 of this Act. After consideration of all such views and arguments, the board shall either approve the plan as submitted or recommend that the Secretary modify the same. The plan or a revision thereof shall then be submitted for the approval of the enrolled members of the tribe, band, or group, or the Indians or families who will participate in the distribution of property in the case of a plan prepared pursuant to subsection (b), and if the plan is approved by a majority of such persons who vote in a referendum called for that purpose by the Secretary, the plan shall be carried out.

(f) Any plan that is not approved by the Indians in accordance with the provisions of subsection (e) of this section shall not be carried out.

(g) Any allottee or grantee under the provisions of this section shall receive an unrestricted title to the property allotted or conveyed.

(h) Before conveying unrestricted title to property or removing trust or other restrictions on property pursuant to the provisions of this Act, the Secretary shall protect the rights of individual Indians who are minors, non compos mentis, or in need of assistance in conducting their affairs, by causing an application to be made for the appointment of guardians or conservators for such members in courts of competent jurisdiction without application from such Indians. Determination of competency and the persons to be appointed as guardians or conservators in such cases by the court shall be in accordance with legal principles applicable to all citizens of California.

(i) The Secretary is authorized to execute or to approve such conveyancing instruments or instruments removing restrictions, or to take such other action, as he deems necessary to carry out the provisions of this section.

(j) Effective on the first day of the calendar year beginning after the conveyance of an unrestricted title to, or the removal of

restrictions from, a tract of land pursuant to this Act, the deferment of the assessment and collection of construction costs provided for in the first proviso of the Act of July 1, 1932 (47 Stat. 564; 25 U. S. C. 368a), and in the Act of August 25, 1950 (64 Stat. 470), shall terminate with respect to such land, and notwithstanding any other provision of law any such land that is in the Cabazon, Augustine, or Torres-Martinez Indian Reservations may be included so far as the United States is concerned in the Coachella Valley County Water District of Riverside County, California, on the same terms and conditions that are applicable to other lands in the district.

(k) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income, estate, or inheritance tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

SEC. 10. The Secretary is authorized to undertake a special program of education and training designed to help the members of a tribe, band, or group of Indians in California earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include property management advice, language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program the Secretary shall enter into contracts or agreements with the California State Department of Education to administer and direct such program. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of \$500,000, to be expended by the Secretary in defraying the costs incurred by the California State Department of Education in carrying out the provisions of this section.

SEC. 11. When property within a reservation or rancheria has been distributed or disposed of in accordance with the provisions of this Act, any constitution or corporate charter adopted by the Indians of such reservation or rancheria pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, shall thereupon be revoked.

SEC. 12. Any allotments after the date of this Act of surveyed or unsurveyed lands of the United States in the State of California that are made under the provisions of section 4 of the Act of

February 8, 1887 (24 Stat. 389), or section 4 of the Act of February 28, 1891 (26 Stat. 795), as amended, or section 31 of the Act of June 25, 1910 (36 Stat. 868), or the Act of March 2, 1917 (36 Stat. 969, 976), shall be evidenced by the issuance of a patent in fee instead of a trust patent. The Secretary shall cancel all trust patents evidencing allotments made under such Acts prior to the date of this Act and shall issue in place thereof patents in fee.

SEC. 13. There are authorized to be appropriated such sums as are necessary to complete the program authorized and directed by this Act within not to exceed five years from the date of this Act.

SEC. 14. The disposition of property as herein provided shall be effected notwithstanding any setoff against the claims of the Indians of California allowed by the court of claims under the Act of May 18, 1928 (45 Stat. 602), as amended.

(C) FURTHER HEARINGS AND PROCEEDINGS

The so-called Rancheria Bill which is set forth in full in the appendix to this report has now been the law for some time. Generally, the methods of terminating federal supervision over these small rancherias follow the same pattern recommended for statewide legislation. The committee, therefore, believes that any successor committee appointed by the California Legislature to consider the problem of California Indian affairs should obtain a full report upon the progress being made under this statute. To accomplish this result, it is recommended that a full scale hearing be arranged at which representatives of the Indians affected would be called upon to testify as to any special problems arising out of the termination pattern established for the individual tribe, band or group.

APPENDIX

(1) THE RANCHERIA BILL

The so-called "Rancheria Bill" was introduced in the 85th Congress as H.R. 2824. After hearings, it was amended to include several additional rancherias and on August 18, 1958, was enacted into law. This bill provides for the termination of federal control over 44 rancherias. Most of these rancherias were geographically small and had minimum problems confronting their termination program.

As was mentioned in the portion of this report concerning the re-drafting of the water rights provisions of the termination legislation, it was recommended that Section 4 of the "rancheria" bill be amended. Subsection 5(g) of the Statewide Termination Bill recommended for passage by this committee would amend the Rancheria Bill in this respect.

Public Law 85-671
85th Congress, H. R. 2824
August 18, 1958

AN ACT

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

Indian rancherias—Land distribution

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

Distribution of assets

SEC. 2. (a) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets

to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

Referendum

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for the consideration of the Secretary. After such consideration, the plan or a revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.

Record of conveyance

(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded in the appropriate county office.

Taxation

(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

Surveys

SEC. 3. Before making the conveyances authorized by this Act on any rancharia or reservation, the Secretary of the Interior is directed:

(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyance of marketable and recordable titles to the lands.

Improvement of roads

(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivisions thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for

the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.

Water systems

(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

Land exchanges

(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

Water rights

SEC. 4. Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

Conveyances

SEC. 5. (a) The Secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.

(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the 160-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.

(c) The Secretary of the Interior is authorized to sell the 560 acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928 (45

Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.

Disbursements

SEC. 6. The Secretary of the Interior shall disburse to the Indians of the rancherias and reservations that are subject to this Act all funds of such Indians that are in the custody of the United States.

Claims

SEC. 7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians subject to this act to share in any judgment recovered against the United States on behalf of the Indians of California.

Appointment of guardians

SEC. 8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.

Educational training

SEC. 9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Finality of plan

SEC. 10. (a) The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2 (b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United

States by an Indian who receives or is denied a part of the assets distributed.

Laws applicable

(b) After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

Revocation—25 USC 461-479

SEC. 11. The constitution and corporate charter adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2 (b) of this Act.

Rules and regulations

SEC. 12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveying instruments as he deems necessary to carry out the provisions of this Act.

Appropriation

SEC. 13. There is authorized to be appropriated not to exceed \$509,235 to carry out the provisions of this Act.

Approved August 18, 1958.

(2) THE GOVERNOR'S INTERDEPARTMENTAL COMMITTEE ON AID TO CALIFORNIA INDIANS

The predecessor committees were aided greatly in the evaluation of their proposed legislation by representatives of all departments of the State which would be affected by such a program. To assist the committee in the evaluation of these problems the Governor had appointed a special committee composed of representatives of each department to act as special liaison between the Senate committee and the different departments. This procedure was again followed. This committee would like to set forth the names of the various members of the Governor's Interdepartmental Committee on Aid to California Indian Affairs in this report, and in doing so to express its thanks for the co-operation rendered by the different departments of the State and the individuals named below.

THE GOVERNOR'S INTERDEPARTMENTAL COMMITTEE ON AID TO CALIFORNIA INDIANS

Mr. Wallace Howland
Attorney General's Office
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Department of Education
721 Capitol Avenue
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Dr. Donald G. Davy
Department of Public Health
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Mr. J. C. Womack
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Mr. Arthur W. Potts
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Mr. Robert G. Eiland
Department of Water Resources
1120 N Street
Sacramento, California

Mr. John M. Page
State Water Rights Board
1401 21st Street
Sacramento, California

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Fifth Progress Report
to the Legislature by the
SENATE JUDICIARY COMMITTEE
for Interim 1957-1959

(Senate Rules Resolution No. 3)

EDWIN J. REGAN, *Chairman*

MEMBERS OF THE COMMITTEE

DONALD L. GRUNSKY, *Interim Committee Chairman*

JOHN WILLIAM BEARD

JAMES E. BUSCH

CARL L. CHRISTENSEN, JR.

JAMES A. COBEY

NATHAN F. COOMBS

EARL D. DESMOND *

RICHARD J. DOLWIG

JESS R. DORSEY *

FRED S. FARR

RICHARD RICHARDS

* Deceased

JOHN A. BOHN, *Committee Counsel*



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OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

SENATE CHAMBER
SACRAMENTO, CALIFORNIA, June 19, 1959

HON. HUGH M. BURNS
*President pro Tempore of the Senate, and
Members of the Senate*

GENTLEMEN: The Senate Interim Judiciary Committee, Senator Edwin J. Regan, Chairman, created by Senate Rules Resolution No. 3, presents herewith a progress report of its activities and results of its investigations together with its recommendations.

Respectfully submitted,

DONALD L. GRUNSKY
Interim Committee Chairman
EDWIN J. REGAN
Standing Committee, Chairman
STANLEY ARNOLD
JOHN WILLIAM BEARD
JAMES E. BUSCH
CARL L. CHRISTENSEN, JR.
JAMES A. COBEY
NATHAN F. COOMBS
EARL D. DESMOND *
RICHARD J. DOLWIG
JESS R. DORSEY *
FRED S. FARR
RICHARD RICHARDS

* Deceased

I. INTRODUCTION

It will be recalled that there have been four previous Interim Judiciary Committee progress reports submitted to the legislative sessions meeting in 1951, 1953, 1955 and 1957. The former reports were submitted by a specially constituted interim committee which was appointed by the Senate Committee on Rules pursuant to Senate resolution. These committees functioned primarily between sessions of the Legislature with comparatively minor activity during the general legislative sessions.

When the Legislature is in session, the official committee to which bills of the type herein considered are referred is the Senate Standing Judiciary Committee, which is composed entirely of attorneys who are members of the Senate. This committee comes into existence at the beginning of each legislative session and normally goes out of existence upon adjournment. The functions, therefore, of the Interim and Standing Judiciary Committees have been considered to be quite separate.

However, upon the conclusion of the 1957 Legislative Session no special Interim Judiciary Committee was appointed, and, as an alternative, the full Senate Standing Judiciary Committee was reconstituted as an interim committee for the purpose of functioning between that session and the 1959 Legislative Session. This new method of procedure recognized the interrelationship between interim and standing committee work and enabled the members to have an uninterrupted consideration of the complex legislation involved. In other words, those matters which were too complex or too revolutionary to be considered during the busy legislative session were automatically referred for interim study where sufficient time could be given to them.

The committee has found that there are two basic underlying principles which govern its work. First, the necessity for interim study of complex legislation submitted, or to be submitted for passage at a general session; second, the requirement for special detailed studies either at the direction of the Senate, or at the committee's own initiative, in broad general fields such as mechanics liens, organization of the courts and similar continuing problems. What is accomplished during these interim studies necessarily affects the accomplishments of the Standing Judiciary Committee during the legislative session and it has, therefore, become apparent that the two must be directly related and co-ordinated.

Accordingly, for the first time this report seeks to provide correlation between the work of the Standing Judiciary Committee during the 1959 Legislative Session and the work of the same committee acting as an interim committee during the period between the close of the 1957 Session and the beginning of the 1959 Session. The report is, therefore, divided into two parts. The first describing in detail interim studies, and the second providing an overall analysis of actual bills acted upon during the session. Some of these latter, of course, are bills

which had previously been studied during interim and detailed testimony on some of them will be found in the report. Also, the action taken by the 1959 Session on the interim committee studies is indicated.

It is the underlying purpose of the Judiciary Committee, in submitting this detailed report in the manner described, to provide the beginnings of evidence of legislative intent for the benefit of bench and bar. It is recognized that this is only a very modest beginning but it is hoped over the years through the same procedure to provide an effective working tool for the attorneys in California.

II. PREVIOUS COMMITTEE REPORTS

For reference purposes the titles of predecessor Senate Interim Judiciary Committee reports are listed below, together with brief tables of contents of matters considered by precedent committees in 1951, 1952, 1953, 1955, and 1957.

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 - 1. Division of Campaign Receipts
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Comparative Negligence

- I. Introduction
 - A. Assembly Bill No. 2588 by Mr. Rosenthal
 - B. Assembly Bill No. 1310 by Mr. Smith
 - C. Assembly Bill No. 3200 by Messrs. Condon and Hagen
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- II. Analysis of Legislative Counsel
- III. Report of the Conference Committee of the State Bar of California
- IV. Report of the California State Chamber of Commerce
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- VI. Recommendations and Conclusions
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Retirement of Judges

- I. The Inquiry
- II. Conclusions
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- I. Previous Reports
- II. Further Work of the Committee
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- II. The Inquiry
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- I. Introduction
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- I. Sponsored by the California Land Title Association
 - A. Section 1600 of the Probate Code
 - B. Section 296.42 of the Probate Code
 - C. Sections 1180 and 1181 of the Civil Code
 - D. Section 1263 of the Civil Code
 - E. Sections 1013 and 1013.5 of the Civil Code
 - F. Section 386.5 of the Code of Civil Procedure
 - G. Section 787 and Section 1532 of the Probate Code
 - H. Section 1198.1 of the Code of Civil Procedure
- II. Sponsored by the California Bankers Association Commission on Legislation and Taxation
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| B. Article XI, Section 21, Constitution of the State of California | W. Sections 360, 361 and 362 of the Probate Code |
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| M. Section 4 of Chapter 339 of the Statutes of 1923 and Section 12024 of the Penal Code | HH. Section 474 of the Code of Civil Procedure |
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| O. Sections 15502 and 15525 of the Corporations Code | JJ. Sections 690.26 and 691.5 of the Code of Civil Procedure |
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| R. Section 1881 of the Code of Civil Procedure | MM. Sections 13307 and 15510 of the Revenue and Taxation Code |
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| T. Section 2105 of the Code of Civil Procedure | IV. Sponsored by the California Code Commission and Others |
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SENATE INTERIM JUDICIARY COMMITTEE
(1955-1957)**

(Senate Resolution No. 146)

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- (1) The State Bar of California
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B. Civil Code

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission
- (3) California Land Title Association
- (4) California Bankers Association

C. Code of Civil Procedure

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission
- (3) California Land Title Association
- (4) California Bankers Association
- (5) Various individuals relating to the subject of eminent domain
- (6) Various individuals relating to the subject of mechanics' liens

D. Corporations Code

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission
- (3) California Bankers Association

E. Elections Code

Bill sponsored by

- (1) California Law Revision Commission

F. Government Code

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission
- (3) California Bankers Association

- (4) Various individuals relating to the subject of mechanics' liens

G. Health and Safety Code

Bills sponsored by

- (1) California Law Revision Commission
- (2) Various individuals relating to the subject of eminent domain

H. Insurance Code

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission

I. Labor Code

Bill sponsored by

- (1) State Bar of California

J. Military and Veterans Code

Bill sponsored by

- (1) California Law Revision Commission

K. Penal Code

Bills sponsored by

- (1) State Bar of California
- (2) California Law Revision Commission
- (3) District Attorneys Association:
Part I—Criminal Law and Procedure
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Opinion of Legislative Counsel on Senate Bill No. 234

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Comments of President of the State Bar of California

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- (1) State Bar of California

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SENATE INTERIM JUDICIARY COMMITTEE—Continued

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- Q. Studies assigned to California Law Revision Commission
- R. Summary of action on bills not reported on in detail
 - 1. Bills considered by the Senate Committee on Judiciary, passed by the Legislature and signed by the Governor
 - 2. Bills considered by the Senate Committee on Judiciary, passed by the Legislature and pocket vetoed by the Governor
 - 3. Bills considered by the Senate Committee on Judiciary, referred to the Senate Committee on Rules for assignment of subject matter to an appropriate interim committee

III. INTERIM COMMITTEE STUDIES ON MAJOR MATTERS

A. MECHANICS' LIENS

1. SCOPE OF THE STUDY

During the 1957 Session of the Legislature the following bills were referred to this committee for interim study:

1. Senate Bill 806. (An act to add Section 1189.2 to the Code of Civil Procedure, relating to notice requisite to filing and enforcing a mechanic's lien.)

2. Senate Bill 2194. (An act to amend Section 1188.1 of the Code of Civil Procedure relating to priority of mechanic's liens and materialmen's liens.)

3. Senate Bill 2304. (An act to add Section 4209 to the Government Code, relating to the filing of claims and notices.)

At a committee meeting early in 1958 it was noted that these three bills all involved various phases of the Mechanics' Lien Law and further that a new proposal on the question of materialmen and suppliers giving notice to the contractor and owner was in the course of preparation. This bill was being proposed by the Building Materials Dealers Association, and committee counsel stated that he had been informally advised that the principle of this bill had been generally agreed upon between the Building Materials Dealers Association and the Associated General Contractors, which was the first time these two groups had been able to agree on this type of approach. It was therefore determined that in view of the pending new legislation that no action or hearing be scheduled on the above bills pending the outcome of a hearing on the new proposal.

Subsequently, on March 25, 1958, an Interim Judiciary Committee hearing was held in Sacramento for the purpose of considering the proposal of the Building Material Dealers Association to add Section 1193 to the Code of Civil Procedure.

Industry representatives present at this meeting were listed as follows:

Eugene R. Booker, Northern California Ready Mixed Concrete & Materials Association.

Elmer Conner, Building Material Dealers Division, Retailers Credit Association.

Lee L. Doud, Building Material Dealers Association.

J. M. Dean, Building Material Dealers Credit Association.

Henry B. Ely, Construction Industry Legislative Council.

Ed Ford, Registrar of Contractors.

W. Keusder, President, Home Builders Council of California.

Albert F. Knorp, Home Builders Council of California.

I. E. Mendenhall, San Jose Steel Company

Leslie W. Miller, Construction Industry Legislative Council

Kenneth G. McGilvray, Building Material Dealers Credit Association of Los Angeles.

Jack F. Pomeroy, Lumber Merchants Association of Northern California.

Arthur T. Raitt, Managing Director, California Lathing & Plastering Contractors Association, Inc.

Kenneth A. Ross, Jr., Associated General Contractors.

Tom Samuels, Manager, Building Material Dealers Association.

Roy W. Sanders, Armco Drainage and Metal Products, Inc.

C. O. Sorensen, Credit Managers of Northern and Central California.
Perry H. Taft, Pacific Coast Manager, Association of Casualty and Surety Companies.
Martin M. Ostrow, California Land Title Association.

2. PROPOSAL SUBMITTED BY BUILDING MATERIAL DEALERS ASSOCIATION, MARCH 1958

An act to add Section 1193 to the Code of Civil Procedure, relating to mechanic's liens.

The people of the State of California do enact as follows:

SECTION 1. Section 1193 is added to the Code of Civil Procedure, to read:

1193. Every person who furnishes labor, services, or materials for which a lien otherwise can be claimed under this chapter must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, give written notice, as prescribed in this section, to the owner and also the general contractor, if there is a general contractor and if the labor, services or materials were not furnished under contract between such person and the general contractor. The notice shall contain a general description of the labor, services, or materials furnished, the name and address of the person furnishing such labor, services, or materials, the name of the person who contracted for purchase of such labor, services, or materials, and the contract price, or, if none, the reasonable value of the labor, services or materials. If an invoice for such materials contains this information, a copy of such invoice, transmitted in the manner prescribed by this section, shall be sufficient notice. The notice may be sent at any time after the labor, services, or materials are furnished, but in no event later than 20 days after the filing of a notice of completion, if any.

The owner or general contractor may, in writing, waive the right to receive notice pursuant to this section. If there is such waiver by the owner and also by the general contractor, if any, giving of notice pursuant to this section shall not be a prerequisite to the filing of a valid claim of lien.

Service of notice under this section shall be made by registered or certified mail or by personal delivery. If service is made by mail, it shall be sent to the address of the contractor and owner as shown by the building permit on file with the proper agency issuing permits. If no building permit has been issued or, in those cases where no building permit is required, service by mail shall be made by addressing the letter to the owner and contractor at any address given the person required to give notice under this section by the owner or contractor, and if none has been given then to the general delivery in the city or town where the owner or contractor resides.

Senator Donald L. Grunsky, Interim Committee Chairman, presiding at the hearing, inquired whether all interested groups had been notified of the hearing and was informed by committee counsel that all major groups on the committee mailing list had been notified but because of the nature of the bill, affecting the entire construction industry, it could not be said that all persons who might be interested had in fact received notice.

Presentation of the proposal was made by Mr. Kenneth McGilvray on behalf of the Building Material Dealers Credit Association. He noted that this was the first time his organization and the Associated General Contractors were in agreement as to the principle of the proposal, which in substance would require a notice to be given by all material dealers and laborers prior to filing a lien on the premises.

Mr. McGilvray suggested that some of the language could be clarified and further that it might be decided to remove workmen from the requirement of giving notice. The major question being raised was whether by the exclusion of labor the bill would become unconstitutional. The point at issue being whether any legislation could treat material dealers different from workmen insofar as the lien laws were concerned.

Other witnesses testified that they desired more time to study the bill and to have further conferences with the various groups affected.

In view of the questions raised and the request by the industry that the proposal be redrafted a further hearing was scheduled on May 5, 1958. Committee counsel was instructed to notify all interested groups or agencies of the proposed meeting.

3. INDUSTRY MEETING

It was determined by the various groups affected that an industry meeting should be held prior to a meeting of the Senate Interim Judiciary Committee in order to consider the new proposal and to propose any amendments that they might feel necessary. This procedure was suggested as a means of resolving new objections and perhaps reaching agreement in areas that had heretofore been impossible of agreement.

The industry meeting was scheduled on May 12, 1958, in Room 414, Capitol Building, Sacramento, and the following persons attended, representing the groups designated:

Becker, Hugo E., Alternate Construction Industry Legislative Council, P.O. Box 1168, Sacramento 7.

Berliner, Marvin A., Credit Manager, Urban Bros., Inc., San Mateo Feed & Fuel Company, Inc., B.M.D.A. Legislative Committee, San Jose.

Bjorn, Russell, Manager, Sub & Material Contractors Association, Inc., 53 Jordan, San Rafael.

Boardman, D. M., Bode Gravel Company, 235 Alabama St., San Francisco.

Bohn, John A., Counsel, Senate Judiciary Committee.

Booker, E. R., Rm. 412, 564 Market St., San Francisco.

Campbell, William H., Campbell Construction Company, 800 R St., Sacramento.

Carroll, Michael, P.D.C. of California, 3410 Geary St., San Francisco.

Chadwick, John E., Central California Chapter, A.G.C., 1118 10th St., Sacramento.

Chapek, Frederick J., Frederick J. Chapek Engineering-Builder, Central Chapter, A.G.C., 1118 10th St., Sacramento.

Collins, J. R., Pacific Cement & Aggregates, Inc., 400 Alabama St., San Francisco.

Conner, Elmer, Executive Secretary, Building Material Dealers Retail Credit Association, 1801 J St., P.O. Box 1318, Sacramento.

Clark, Henry Gray, Assistant Registrar of Contractors, 1020 N St., Sacramento

Dean, J. M., Building Material Dealers Credit Association, 2351 W. Third St., Los Angeles 57.

Ditto, David L., Santa Clara County Concrete Dealers Association, 1043 Park Ave., San Jose.

Doud, Lee L., Credit Bureau, Material Dealers Association, 222 South Second St., San Jose.

Drucker, Fred H., Johnson & Stanton, 111 Sutter St., San Francisco.

Eastman, Orville W., President and Chairman, Legislative Committee, B.M.D.D. (R.C.A.), 2601 Stockton Blvd., Sacramento 17.

Edison, Stanley J., Cedar Products Company, 176 Hillcrest Rd., San Carlos.

Ely, Henry B., 458 S. Spring St., Los Angeles 13.

Ferris, Melton, California Council, A.I.A., 703 Market St., San Francisco.

Ford, Ed, Registrar of Contractors, 1020 N St., Sacramento.

Gannon, Joe, President, State Builders Exchange, 4181 Union, Bakersfield.

Hipkins, E. R., American Forest Products, Inc., San Francisco. Mailing address: c/o Chase Lumber Co., P.O. Box 328, San Jose.

Hodnett, Lloyd A., C.I.L.C., 2522 Y St., Sacramento.

Keusder, W., 4915 Exposition Blvd., Los Angeles 16.

Knorp, Albert F., Home Builders Council of California, 300 Montgomery St., San Francisco

Mack, J. D., C.I.L.C., 785 Market St., Rm. 1405, San Francisco.

Miller, Leslie W., Construction Industry Legislative Council, 1331 T St., Sacramento.

Miller, Prentice H., Chase Lumber Company (B.M.D.A.), P.O. Box 328, San Jose.

Nelson, Herm, Peninsula Builders Exchange, 735 Industrial Way, San Carlos.

Nichole, Tim, 1329 Foothill Boulevard, La Canada.

Ostrow, Martin M., California Land Title Association, 433 South Spring Street, Los Angeles.

Pomeroy, Jack, Lumber Merchants Association of Northern California, 24 California Street, San Francisco.

Raitt, Arthur, California Lathing & Plastering Contractors Association, 3558 West Eighth Street, Los Angeles 5.

Reynolds, Hal, California Council, A.I.A., 1714 Capitol Avenue, Sacramento.

Ross, Kenneth A., Jr., Southern Chapter, A. G. C., 3963 Wilshire Boulevard, Los Angeles 5.

Rothschild, Robert B., Jr., Rothschild, Raffin & Weirick, General Contractors, 274 Brannan Street, San Francisco.

Samuels, Tom, 222 South Second Street, San Jose.

Spring, G. W., Jr., Associated Subcontractors of Southern California, 241 North Larchmont, Los Angeles 4.

Stewart, Harry G., B.C.A., 1571 Beverly Boulevard, Los Angeles 26.

Thatcher, Ted L., Dolan's, Credit Manager, 200 K Street, Sacramento.

Townsend, H. F., P.D.C.A. of Alameda County, 4322 Grove St., Oakland 9.

Trammell, Willard, Affiliated Engineers-Contractors, Inc., Central Chapter, A.G.C., 1118 10th St., Sacramento.

Wilcox, C. S., Yolland Materials Company, Stockton.

Zelmer, Austin, Chairman, Legislative Committee, San Jose Chapter, Credit Managers Association, Northern and Central California, P.O. Box 231, Watsonville.

John A. Bohn, committee counsel, who had been asked by the industry to act as moderator for the meeting, gave the following explanation of the background of the new proposal and the problems encountered in this field.

JOHN A. BOHN: My name is John Bohn. I am the counsel for the Senate Judiciary Committee and a subcommittee of that group is studying the subject of mechanics' liens, which is a continuation of studies we have had over the last five or six years on the whole general subject matter. Let me first of all make it perfectly clear that my appearance here today is a purely informal one. The matter was never taken up with the Judiciary Committee officially. This is not a hearing of the Judiciary Committee, since I have no authority to conduct such a hearing and I think it would be premature if members of the committee themselves conducted a hearing at this stage. Rather, as I understand it, this is an attempt of interested individuals in the construction industry to compare notes and see if it is possible to find some common understanding so that we can move along a little bit on this whole subject. By way of background, I should state that in over 10 years that I've been working for the Judiciary Committee in Sacramento, at every session of the Legislature we have had dozens of bills involving the general subject of mechanics' liens. On at least one occasion, and I think two, substantial revisions were made in the statutes and I gather that in general the statutes, as amended, are working fairly well. However, the basic problem of the general protection of the public on this question has received a lot of consideration in the past and there are some who feel that it has not been solved.

A few years ago there were several scandals in Los Angeles County. I've even forgotten the names of the contractors who went into bankruptcy, but the Grand Jury of Los Angeles County invited the entire Senate Judiciary Committee to meet with them on two occasions. They adopted a series of resolutions demanding in effect substantial reforms

and revisions in the Mechanics' Lien Law. They also had some specific suggestions in those resolutions as to how the law should be amended. I think that it is only fair to state that the Judiciary Committees of that time felt that there was a need for improvement and change, but did not agree that the suggestions made by the Los Angeles County Grand Jury were technically sound and therefore no specific action was taken by that committee except to recommend certain types of reforms, but the matter was not pressed very hard.

Since that time there have been three or four other hearings. I guess the largest was in Santa Barbara a few years ago, in which we reviewed the whole problem and there were, as all of you know, several bills before the Legislature at its 1957 Session dealing with the general subject. However, in the past, as these bills came before the respective committees of the Senate and the Assembly, what has happened has been that the construction industry has lined up solidly, for or against a particular bill, and as a consequence, and because of the enormous economic features of the situation and the widespread interest, there has been little action of a specific or concrete nature. Originally, there was a hearing set before the subcommittee of this particular Senate Judiciary Committee a short time ago, on the theory that the men in the industry were now pretty well in agreement. However, different individuals representing different groups called me stating that in fact no such agreement had really been crystalized due to lack of time and for other reasons so those meetings were called off.

At the May 5 meeting of the Senate Judiciary Subcommittee on this subject it was generally decided that probably in early September there would be an official subcommittee meeting at which this subject would be taken up formally and officially by the committee, allowing the time between now and then for whatever meetings and whatever decisions the industry wished to make. Thereafter there will be several meetings of the full Judiciary Committee to consider whatever recommendations the subcommittee wishes to make.

I think, also, that it might be well at this time to indicate to you how the Judiciary Committee of the Senate is working this year. We have a new system. The entire standing Judiciary Committee which normally meets only during the legislative sessions has for the first time been reconstituted as an interim committee, and that committee acting as an interim committee has divided itself into subcommittees, one of which deals with matters of real estate and probate, which is headed by Senator Dolwig of San Mateo County, and that subcommittee is the one which will consider this particular matter of mechanics' liens. The reason for the Judiciary Committee acting en banc, so to speak, between sessions of the Legislature, is to attempt to cut down the volume of bills which we are faced with each general session. The Judiciary Committee gets more bills, I think, than any other committee of the Senate, sometimes as many as 40 percent of the entire number of bills considered by the Senate. This, then, will run into sometimes six, seven or more hundred bills which that committee must consider during the session, and, as you know, each member of that committee is also a member of at least two other committees; as a consequence, we meet once or twice a week for three or four hours, have an agenda of about 40 bills each time, and it doesn't allow a great deal of time for these

highly technical and complex matters. So what is being attempted this time is that subcommittees will consider the various fields; they in turn will make their recommendations to the main committee, which has regularly scheduled hearings; the main committee will then take semi-final action on the particular proposal, and let us assume in the case of mechanics' liens, for example, to tie it down, that the subcommittee at its September meeting chose to recommend for or against a particular bill. That recommendation would then go to the main committee at its next general meeting, which will be, I think, in October. All interested parties will then be notified of the fact that the subject matter is coming up before the main committee and with an opportunity to appear for or against the recommendation of the subcommittee. The main committee will then attempt to reach a decision, by vote, yes or no, as to the particular proposal or recommendation, and, if they reach a decision by vote, the matter will not receive a great deal more time during the 1957 Session, on a theory that these are the same men that have to vote during 1957 and they were trying to dispose of as much of the work as they can between sessions so that you who are interested in legislation will have an opportunity for a full and complete hearing. Nobody, of course, will be precluded from objections. The idea simply is instead of waiting until the pressure and rush of the session in 1959 to make this decision, that it will be made in, we hope, a calmer and a more leisurely atmosphere in between times. The members of the committee have agreed and are conscientiously appearing at all of the meetings and they have agreed between themselves that they are going to devote whatever time is necessary between legislative sessions in order to give you and all of us who are interested as much time as we reasonably need. Well, so much in the way of background.

The question has been asked me on the telephone as to the reason why we are all interested in these various changes, why are there any changes necessary? I, of course, cannot answer that question. That would be up to you to answer, but I will say that starting with that grand jury investigation, from time to time, different groups have approached the Legislature, particularly in times of declining economics, or whatever it might be, when a homeowner loses his home or when a large subdivision goes haywire, the whole impact of the Mechanics' Lien Law becomes apparent and people begin to wonder what sort of a situation this is where the owner pays twice for the same work or loses his property.

I intended to attend just as an observer today and listen to what industry had to say. Several of those present, however, felt that perhaps by acting as sort of a chairman I could help speed the process. I'd be perfectly willing to, so if everybody in the room understands that this is not any official action as far as the Judiciary Committee is concerned, it is just my attempt to help out to push this along. With that by way of preliminary, I think probably it's just as well to get started right at the particular bill that we are concerned with. First of all, does anybody have any questions, as to why we're here and what we're going to try to do?

MR. MCGILVRAY: I'd like to state, John, just for the record, I am Kenneth McGilvray of Sacramento, representing Building Materials

Dealers. If we all do that it will help a good deal to keep our records straight.

MR. BOHN: Thank you, I'm glad you mentioned that, Ken. Let me also state we are taking a transcript of these hearings. There is no legal reason why we must do so and if anybody would prefer that we not take a transcript or if that's the consensus of the group we will simply turn the machine off. If, however, you want a transcript, we will take it, and if those of you who want copies of it will let us know we will arrange for copies to be available to you. Let me first of all ask, "Is there any person or group present who feels that we will be handicapping ourselves by formalizing this proceeding with a recording?" Anybody objects to recording these hearings? (No response.)

In order to get the meeting started, with your permission, gentlemen, I will first of all ask the representative of the Material Dealers Association to present a proposal which we have all seen, I think, telling us the reasons for it and then perhaps we can go on from there.

MR. MCGILVRAY: I'm Kenneth McGilvray. There was presented on March 25, a proposed bill which was prepared by the Legislative Counsel Bureau at the request of Assemblyman MacBride, who is an Assemblyman here in Sacramento. I asked him if he would make the request to the Legislative Counsel Bureau, which he did. Mr. MacBride has been interested, on the Assembly side, in mechanics' lien legislation, and it was request number 1121 to the Legislative Counsel Bureau to add Section 1193 to the Code of Civil Procedure. The subcommittee of the Senate was to meet in late March, but, due to the fact that the budget bill was very pressing and water legislation was going on, the subcommittee found itself under a call of the house and, though a great many that are here today were present for the hearing, the committee was forced not to give us much time. At that time it was said that we would probably have a hearing on May 5, and we had proposed this after a considerable number of meetings in Los Angeles, of the Building Materials Dealers Credit Association, of which Mr. James Dean is secretary and is also here in Sacramento as their representative.

The proposal to add Section 1193 to the Code of Civil Procedure got out of industry fairly late, but it was one of those things that couldn't get out any earlier because the Legislative Counsel Bureau was busy and also committees in Los Angeles of our side of the industry just could not get together and meet and make up their mind. The effect of this amendment would be to shorten a period in which liens could be filed by requiring everyone except laborers to give a notice within 20 days after a notice of completion was filed that they had furnished material or that they were subcontractors. We felt that if that were put in that within a period of 10 days on a job, where a 30-day notice of completion is all that was required, and of course for a general contractor where it's 60 days, the people who are going to pay these bills, whether it be the general contractor or the owner, would have a 10-day period to check with his financing, and if he didn't get the notice then he could, with reasonable certainty, pay these bills off. By the end of the period, when he wants to move into his new home or he wants to take possession of the building that's being constructed, he could say to his financier or the bank or whoever was giving this money, or if it was his own—well, I'm free and clear; no notices came in.

This was an attempt to try to prevent a double payment, and the credit side of industry has always said that anything that they can do on behalf of the homeowner or the general contractor to prevent double payment, they are willing to do. However, this bill has received considerable opposition. It's different from the notice bills that were introduced in the 1955 Session and at the 1957 Session. Those bills were patterned after the Washington law, which said that within five days, some of them said 10 days, after a materialman furnished any material to a job, he had to give notice to the owner or to the contractor that he had started to furnish materials. The material side of the industry vigorously opposed those bills, and they were not moved in either session of the Legislature over the opposition which developed and which was quite considerable. In discussing this matter with committee members on both sides of the Legislature they have all said that they felt that something should be done, that industry should come up with some proposal that would alleviate the situation that developed in Los Angeles that caused the grand jury investigation.

From the material side we don't like the double payment, we don't like to see the homeowner or the little builder lose, and we don't feel that the general contractor should have to be forced to pay after everything is practically over because of his provision, if he has a bond, that you can sue on that bond within six months. And so this proposal of, as we have put it in, that 20 days after notice of completion is filed that you must notify the owner and the general contractor, unless the general contractor was the purchaser, was put in. There are some defects in the bill itself, technical matters; I'm not going to go into them now because other phases of industry will discuss them. It was only put in and was only suggested in an effort to come to some agreement, industry-wide, as to what will alleviate the situation.

For instance, the type of notice that would be given, whether it would be registered or certified mail, is of no great moment. I believe Mr. Ross has some of those amendments definitely in mind that would be proposed to the basic bill. So that's what we put in, in late March, and it does have the recommendation, as I understand it, Mr. Dean, at least it did, of your industry in Los Angeles.

MR. BOHN: The bill that you're speaking of is the one which carries request number 1121, of the Legislative Counsel?

MR. MCGILVRAY: That is right.

MR. BOHN: And that is the bill which does not exclude labor; it includes labor in the requirement of furnishing this notice. Is that correct?

MR. MCGILVRAY: Yes, it does not exclude labor.

MR. BOHN: Now may I ask next, are there any other representatives of any other industry who want to speak on behalf of this bill?

MR. KEN ROSS: Indirectly, yes. My name is Ken Ross. I represent the Southern Chapter of the Associated General Contractors. If I may, Mr. Chairman, without attempting to in any way usurp the contractors' side of this picture, perhaps try to draw the general contractor groups together here and to avoid duplication I will call on various ones to present their picture. First, I would like to say that we concur with the statements made by Ken McGilvray as to the long history that has prompted this request made by the Building Material

Dealers Credit Association of Southern California. We are supporting this bill with some revisions. We do not think that it solves our problem, but we do believe that it is a major step in the right direction toward the solution of the problem. I think our problem could be very simply stated in that, as general contractors, in addition to having the desire to protect the public, we have a very definite concern over the problem of double payments and we are hoping that this will go a long way in the direction toward eliminating double payments. That is our problem very simply.

We do not necessarily feel that this is the only solution to it, but it seems the most logical that has been presented to us at present. There have been many avenues followed and many attempts made to come up with legislation that would solve the problem in other areas, such as strengthening the license law, requiring that all contractors, generals and subs, be bonded and various and sundry other proposals. There are, of course, difficulties with all of them. It may be that there is another solution to it, but right at the moment, at least, as far as the Southern California Chapter of the Associated General Contractors is concerned, we feel that this is the most logical solution to the problem.

We have met as the Southern Chapter with the Construction Industry Legislative Council, and also the Central Chapter of the A.G.C. has met with them and Northern Chapter, although I am not intending to speak for Northern and Central Chapters at the moment. We have met also with the Home Builders Council of Southern California, and I would like to, if I may, call on representatives of the major areas here to make a brief statement as to their position.

First, I think it would perhaps be in order to call on Mr. Henry Ely, as a representative of the C.I.L.C., if that is in agreement with Les Miller, your representative, to explain the changes that we have proposed to the bill, as drawn by the Legislative Counsel, and referred to by Ken McGilvray.

We made these changes and presented them at the last meeting of the Senate Interim Judiciary Committee, and I believe that the basic changes are available to all of you. However, since that date we have made some refinements to the bill and I think that perhaps Henry Ely can explain those to you. I would then like to ask Walter Kuesder, who represents Southern Chapter A.G.C. and Home Builders Council, I believe, to explain the bill that relates to public work. I don't know whether all of you have seen this bill or not, but it was our intention to draw a bill that would cover substantially the same area but related to public work rather than private work through the lien law.

Henry, if I can call on you first to explain our changes to this bill drawn by the Legislative Counsel, request number 1121, in case you would like to refer to it.

HENRY ELY: My name is Henry Ely and I am speaking for the Construction Industry Legislative Council in connection with this lien notice proposal, request number 1121. The Construction Industry Legislative Council is in favor of the general proposition to assist the homeowner to avoid double payments. Many of the members of the construction industry council are representatives of subcontractors, and as subcontractors they are both in the position of the material dealer as well as the position of the general contractor. We would favor a simple

procedure to protect the owner. We were opposed to the 1957 proposals because of the undue burden imposed on the contractor in carrying out its requirements.

I also represent the Construction Employers Council of Los Angeles, and we have approximately 2,000 subcontractors, and I suppose 1,000 subcontractors have only one or two employees in their employ and their wife, away from home duties as permits, takes care of the books and records of the contractor, and therefore we must take into consideration any proposal that it is easy for the small contractor as well as the large contractor to carry out. We have made certain suggested changes, which do not have specific approval of the Construction Industry Legislative Council because we have not met since I was appointed as a subcommittee to work with the Associated General Contractors and the Home Builders Council to develop some changes which would make the law more practical. But with that in mind, that it has not as yet the official approval of these councils, I would like to point out the changes that we are suggesting at this time.

We first make an exception to the coverage under the proposed Section 1123 to those who are under contract with the owner, since the owner then knows that person may claim a lien. We also expected labor. I have had some informal conferences since that time and have been advised that there is a possibility that that might be unconstitutional, but I have not received any definite word on it. Then we follow along with the former 1121 and going to the next sentence we eliminated from the requirement of the notice the price of the contract, since at the time the notice would be given in most cases there is no relationship between the original price of the contract and the possibility of the lien, because in most cases some payments have been made on the contract. We continued the proposal that an invoice would be sufficient notice, as proposed in the original request 1121. We have, however, cut down the time within which the notice must be given in order to maintain the lien, from 20 days to 10 days, because we feel that if it is practical to get the notice of completion information on the notice of completion promptly after it is filed with the county recorder, we could cut down the time. We feel that would be a benefit to the owner and we also believe that it may bring about prompter payment of the final payment on the job. However, we are concerned with the fact that in some counties it is almost impossible to know that a particular notice of completion by a particular owner has been filed with some degree of promptness. That is not a major problem, but it is a question that we are still studying. We also tied in the reference to notice of completion with the provision in Section 1193.1, which defines notice of completion. Then we also provided for a clause that if no notice of completion is filed then the notice can be given a longer period than if a notice of completion had been filed. We have suggested 35 days, because the right to file a lien when no notice of completion is filed is extended to 60 days instead of 30 days for the materialman or subcontractor.

Then we inserted a new clause reading as follows: "Any agreement made or entered into by an owner whereby the owner agrees to waive the rights or privileges conferred upon him by this section shall be void and of no effect." We took that provision from a similar provision in the present lien law regarding certain rights and we were of the opinion

that a general contractor with a printed form of contract could provide for a waiver of the rights of the owner and that the owner being, so to speak, not an expert in the building and construction industry, might very well waive the right without having any knowledge of having waived the right.

Then we reworked the notice clause. We have a new law, I don't remember the exact reference, which provides that wherever any building permit is issued by a city, that it must contain the name of the owner and the name of the contractor, so there isn't much trouble if the name of the owner is easily ascertainable by the subcontractor, and also there isn't much trouble if the name and address of the general contractor is easily ascertainable, and, as we know, there are subcontractors who do not come into any contact with the general contractor, and if a contractor is from outside the State his address may not be easily ascertainable. So we provide for a notice by registered or certified mail, and then we also provide that, if no building permit has been issued, or if the building permit does not contain the address of the person on whom notice was required to be served under this section, then the service of such notice shall be by certified or registered mail addressed to the job site with the envelope containing the name of the owner, if known, or, if not known, then merely "Owner," or the name of the original contractor, if known, or, if not known, then to "General Contractor."

We hope that that is an adequate way to not only protect the owner, but the subcontractor in the event the owner's name and address is not known or the general contractor's name and address is not known. And our final change was in regard to when the notice by certified or registered mail is complete and we provide that the notice is complete within the meaning of the 10-day period when deposited in the United States Post Office. Those were the changes that we suggested.

MR. MCGILVRAY: Thank you, Henry. I wonder if, for the record, I might ask Les Miller if he would define who makes up the C.I.L.C. for the group.

MR. LES MILLER: Here today, you mean, Mr. McGilvray?

MR. MCGILVRAY: No, generally speaking. What areas would Henry Ely have been speaking for within the C.I.L.C.? Realizing, of course, that all approvals of this thing within the industry are tentative at this stage.

LES MILLER: Mr. Chairman, this will pretty well follow the C.I.L.C.'s proposal, but, as Mr. Ely pointed out, we haven't had a chance to meet officially with the C.I.L.C. to sort of ratify this proposal, So I guess that you might say that Henry is speaking more or less unofficially for the C.I.L.C. today. Is that correct, Henry?

HENRY ELY: That is correct.

MR. MCGILVRAY: The question was, Les, what components make up the C.I.L.C., for the record?

LES MILLER: Well, we have the various associations, such as Mr. Art Raitt, representing the lathing and plastering; Mr. Henry Ely, who represents the C.E.C. Construction and Employees Council; Mr. J. D. Mack, who represents the plumbers; Mr. Mike Carroll, who represents the painting contractors.

MR. MCGILVRAY: Are there other elements not represented here today?

LES MILLER: Yes, Mr. Ernie Kramm, who represents the electricians, is not here. The roofing contractors are not present. Tony Neilly is not here; he represents sheet metal. State Builders Exchange is not represented here. I don't see Gene Crane. Mr. Joe Gannon is president of the California State Builders Exchange. He is here today. I think that is about all.

MR. MCGILVRAY: Thank you, Les. I thought it well to establish perhaps what areas are here.

LES MILLER: Mr. J. D. Mack is chairman of the Construction Industry Legislative Council, I might point out.

MR. MCGILVRAY: Thank you, Les, I think it might be wise to establish, generally speaking, what position the various elements of the construction industry are taking. If I could call on the various elements here and ask if they wish to take a position generally concurring or objecting or adding something to what Mr. Ely has said. The Home Builders Council is represented by Al Knorp. Al, do you have a statement or do you have someone making a statement in your behalf?

MR. KNORP: I'd like to refer my statement to Walter Keusder, who is president of the Home Builders Council.

MR. MCGILVRAY: Fine. We'll be calling on Walter in a moment in conjunction with our public works bill.

MR. KNORP: In the event you want to establish, for the record, our representation, we represent the Home Builders Association, North and South, within the State.

WILLIAM CAMPBELL: The Central Chapter, A.G.C., is very much in favor of having something worked out in the order of this bill we're talking about. Something that, in effect, would give the general contractor a notice as to who the people are who come in later with the liens. That, in effect, is what we're after and if this notice will do it, we're for it if it can be done without hampering other people in the industry.

MR. MCGILVRAY: Thank you, Bill. I'd like to also call on Mr. Bob Rothschild, chairman of the Legislative Committee of the Northern Chapter of the A.G.C.

BOB ROTHSCCHILD: As the Central California Chapter said, the Northern California Chapter also is very much in favor of something along these lines which will improve the situation. I would like to say that the basic problem for the general contractors with the present lien legislation is this: that as general contractors they have no practical way of knowing which material dealers are delivering material to the job, and that is something we would like some protection on.

MR. MCGILVRAY: Thank you, Bob. The San Diego Chapter of the Fourth Chapter of the A.G.C. is not represented today. Is anyone present? I think we are safe in saying generally that the San Diego Chapter concurs with what the other three chapters have expressed here inasmuch as they have been in meetings with us.

I would like, at this time, if I may then, call upon Mr. Walter Keusder, who is a member of the Legislative Committee of the Southern Chapter, A.G.C., and representing the chairman, who happens to be in Europe at the moment. If you will, Walter, will you also explain

the proposal that the Southern Chapter, A.G.C., is making relating to public work?

WALTER KEUSDER: Yes, let me say this, just a couple of words on this bill that Mr. Ely has outlined. That is the result, frankly, of a number of meetings between various groups of home builders and the A.G.C. and Mr. Ely in Southern California starting from this original suggested bill that the material dealers put in, and it is the culmination or the result of a considerable amount of thought. Certainly, I presume there is no such thing as a perfect solution to a problem that would be equitable to all segments of the industry, but we feel that this bill, as Mr. Ely has finally written it up, is probably the closest to a reasonable solution to the problem that it is possible to get together on with the various segments of the industry. Therefore, I think, as far as the Southern California Chapter of the A.G.C. and I have here the Chairman of the Legislative Committee of the Home Builders Council of California, Mr. Knorp, with me, but I think I can speak for them. As far as we're all concerned we feel that this is the first concrete bill that comes close to solving at least a large portion of our problems under the lien law and we're heartily in favor and I think we'll have no trouble in getting approval of this edition that Mr. Ely submitted to you.

Now that takes care of private work, insofar as it can be taken care of on that basis, but we also have the situation where on government work, where lien rights are not applicable, the third parties are able to claim moneys the same way that a lien might be claimed against the bonding companies and the term under which they could claim that runs to six months after the job is completed. There have been many instances where five months or more after a job is completed and paid off, the bond's been discharged and everything's clean, some material-man comes forth with a claim for materials furnished on that job that nobody had any knowledge of. So we have written this suggestion which would amend Section 4206. It's very short; we have two little inserts in it that are not in the bill, as a cleanup. It says "Provided, however, except as to persons who performed only labor on the work contracted to be done, a suit on the contractor's bond shall not be maintained by any person not having a direct contractual relationship with the contractor unless said person shall first give written notice by registered," and I've added "or certified mail to said contractor within 10 days after any notices provided for in Section 1192.1 of the Code of Civil Procedure, has been filed for record or if said notice is not so filed for record within" and I've changed 10 to "35 days" to make it conform to the other bill "after the date the work of improvement is being completed according to the provisions of Section 1193.1 of the Code of Civil Procedure."

I might elaborate on the reason we used that 35 days that Mr. Ely mentioned. 1193.1 covers those cases where there is no notice of completion filed and also those cases where there is a cessation of labor; it would possibly take a little longer to determine what the actual completion date would be. That date, of course, eventually has to be determined if anyone is going to file a lien. But since the lien period then is extended we felt that it was only fair to increase that to 35 days. So that, as a companion bill to the other, would take care of the situation

that I mentioned where a suit against the bonding company could be filed long after anyone knew there was any such claim pending or any possibility of such claim.

Now as far as this 10 days, I'd like to elaborate just a little bit on that also. Naturally, the sooner these notices can be filed and the shorter the period of time under which a lien right can be established, the sooner a contractor and an owner can feel free in making out the final payments on his jobs, so therefore the shorter period of time that is the less tendency there will be to hold back moneys to cover themselves. Further than that, it gives a greater length of time to work out those situations where somebody doesn't have some money, somebody's going broke, and what have you. The 10 days' difference between 20 days and 30 days would be an awfully short period of time to work out some of the problems that arise where a subcontractor, for instance, gets into financial difficulty and something has to be worked out between the owner and the general contractor and the claimants. So we felt that the shorter period of time we could make that the better it would be. The reason they used 20 days in their original bill was the fact that in some counties it was thought that it would take a long time, possibly, to obtain the information. San Bernardino County was mentioned, and we have checked with the *Southwest Builder and Contractor* in Los Angeles, who publish all this type of information, including the filing of notices of completion in all of the southern counties—I guess San Diego is in there too—and they get their information by mail from these outlying counties.

They tell us that the longest that they have ever taken to publish the filing of a notice of completion in San Bernardino County, which is probably the toughest one to get out of, was five days and that usually is because of the little delay in the mails that they are able to get it from the recorder's office within two days. Actually, I don't think there is any county in which the title companies do not pick up every clocked instrument that is filed every day, including notices of completion. Now they don't, unfortunately, tabulate them with the owner's name and address and the contractor's name and address, but it is an indication that they are available and I firmly believe that, with a little study, a method can be worked out where this information of the filing of a notice of completion can be obtained in any county of the State within a couple of days.

I don't know whether it would help, but I presume there is a possibility that legislation might be enacted requiring the counties to make public, in proper form, that information within a period of two days if we find that there is some question of some of the counties being dilatory about it. There have been similar statutes passed before this requiring the cities and counties to publish the firm, the name of the owner and the contractor, but we do feel that the 20 days would be too long. We would like to see it not exceed 10 days. If we could figure it would be practical to make it shorter then we'd do it.

KEN ROSS: Ken Ross, A.G.C., again. For the sake of the audience here who have not seen copies of this proposal covering public work, we would point out again that it is our intention to make the provisions for filing on public work identical with those for filing on private work and if the bill does not now do it, it would be our intention to amend it

to do so. I'm wondering if Marty Ostrow, representing title insurance companies, would like to make any comment regarding this recording of filings of notices of completion.

MARTY OSTROW: My name is Martin Ostrow and I represent the California Land Title Association. Actually, we have received a request from the Home Builders Council to interview the members of the California Land Title Association, which consists of the title companies in all the counties of California. In an effort to answer whether it would be possible to have this information available on a daily basis or semi-weekly basis, we are in the process of getting that information now; possibly within the next two or three weeks we ought to be able to get a definite indication. We are interested in the problem and we're trying to co-operate as much as we can, though there is nothing specific to offer right at this time.

KEN ROSS: Thank you, Marty. I think this concludes the portion that I will have anything to do with. I might say in conclusion that we have attempted to get the principal contractor organizations, principally in the south again, together on this final draft, and some of the contractor associations in the north have not had adequate time to see them and to fully acquaint themselves with the details of the proposed bill. I would like to say that in the south the Associated General Contractors, the Construction Industry Legislative Council, which covers the majority of the subtrades, the Home Builders Council, are generally in agreement.

In the north, there are certain chapters, I understand, of the building contractors association and certain home builders associations who are not in accord generally with the stand that we have taken; however, it has been our attempt here to combine the principal general contractor associations in drawing the amendments to the proposal made by the Building Materials Credit Association of Southern California. Although we are not indicating or speaking for all general contractors or all chapters or segments of the major associations, I believe that we do speak for all of the major general contractors associations in the south, and a principal part of them in the north as designated by the various speakers.

HARRY STEWART: Mr. Chairman, I am Harry Stewart, executive director of Building Contractors Association, and I'd like to correct one thing there. Ken had a little misinformation, I think, here the other day. We know of no home builders group that are in the council—and there are 10 of them in the council—that are not in accord with this at the present time. There was some rumor that one of them was not, but we haven't been able to confirm that.

HENRY ELY: Mr. Chairman, Henry Ely, Construction Industry Legislative Council. Our council has not acted on any changes in connection with the Public Works Law. We haven't had the opportunity yet to study it and we are reserving our rights for further study of this particular language proposed. I do think, though, that, generally speaking, the Construction Industry Legislative Council desires to have some shorter provision for the filing of a suit on surety bonds so far as public works is concerned.

MR. BOHN: There is, I'm sure, some opposition or some further comments, but before asking for them perhaps it might be helpful to

recapitulate just what the problem is. From the point of view that I have heard from a wide variety of groups over the years, it just has seemed to me that as I hear people speaking on this general subject, and, as I see these cases tried, every time liens are filed or every time lien suits go to trial everybody loses, including the homeowner. The suits that I have seen, and I've seen a good many of them over the years, seem to indicate that it would be to the advantage of everyone in the entire industry to avoid this litigation if it is at all possible. I have the feeling that there are some groups who feel that these additional burdens might constitute an unreasonable burden, and we will hear from them in just a minute. But I do hope we can keep in mind this other factor, where, by the hundreds and sometimes by the thousands, these suits are filed and everybody ends up with 60 percent or 70 percent of the amount of the claim or nothing, if the bank loan happens to be so high that there isn't enough money left over for the people who put the material in it. Is there anyone from the material dealers group who wishes to speak in opposition to these bills? I can't believe that everyone in the room agrees with them.

TOM SAMUELS: Tom Samuels, Building Material Dealers Association, San Jose, also representing several other material organizations in the Bay area. Would you like the name of these associations? Sub and Material Contractor Association, San Rafael; Northern California Ready Mix Concrete and Materials Association, San Francisco; Northern California Rock, Sand and Gravel Association, San Francisco; Santa Clara County Concrete Dealers Associations; Credit Managers Association, San Francisco; Credit Managers Association, San Jose. That concludes the list for which I can officially speak today.

We held two meetings recently in San Jose, one on May 1 and the other was May 8, last Thursday. We want to do everything we can to help the materialman. After all, it's the materialman, we hope, who will discount his bill on the 10th of the month. The reason we are in business is for contractors; that is our main reason. As I've studied this legislation over the last several years, it appears that it's predicated upon doing a service to the homeowner. I believe that's the way it started out with a hearing of the grand jury investigation in Los Angeles several years ago, that we do something that will protect and benefit the homeowner so he will not have to pay, let's say, once and a half, because I can't quite go along with the thinking that the homeowner so many times pays twice. I think he may pay once and a half because he's paying the material bill but in the first place he paid for the labor and/or the material.

We are willing and we can see the need of legislation to help that class of person; however, we do not feel that the bill that has been proposed is designed for the purpose for which we are talking. I can't quite see where there is a difference in the homeowner's position after the fourth payment, and I'm speaking of normal five-payment construction style, where, after the fourth payment has been made, the bills have accumulated, all the work has been done, the job isn't going to be any poorer or richer the time that lien is filed between the fourth and the fifth payment.

Now, from conversation, it is also obvious that the contractors need some help. We're willing to help them. Their problem is our problem.

We're willing to help them, but we don't want to stand the entire burden, the expense that goes with it. If there is a situation within an industry or a segment of an industry that must be cleaned up, I think it's up to that segment to clean it up. Some of our people have made surveys, and they've estimated that the cost of this type of legislation for one firm would amount to \$12,000 per year, \$1,000 a month. Now, that's just one firm, and we get down to the final realization of it as to who is going to pay this \$12,000 per year. You people are going to pay it. We are ready, we're perfectly willing to discuss legislation which will help you. We want to do it. We don't want to be up here year after year as we have been for the last several years just to say "we object", "we object", "we object". It's obvious we do object, but we want to place the burden where it belongs, we want to help you fellows, and we'll do anything we can, providing we don't have to stand the expense.

Now, from an operating viewpoint, it's going to be very difficult for the materialman to obtain the notice of completion within the time. We started out here originally on a period of 20 days; I've heard mention of seven days and other figures quoted. It's going to mean that a person who wishes to follow their lien right will have to subscribe to a special service, or they will have to send someone to the recorder's office each day to pick up the information. What's going to happen when we get into a three-day weekend? We say seven days. You got a three-day weekend coming up this month. That's going to leave exactly four days to check the record, to follow through with everything that's necessary to comply with the bill. I'm afraid it's going to be a little bit difficult too, in the event that the property has been deeded to another person, firm or corporation within the period under which it's under construction. I think you fellows will readily admit that, many, many times, the property is deeded to the contractor for the purpose only of recording the loans. As soon as the loans are recorded it's deeded back to the title company, and the holding agreement release clause agreement for the benefit of the person who holds the second trust deed or originally owned the property.

What's going to happen in the event of illness, sickness, within an organization? Designate a particular girl to check the records; she turns up sick; one, two, three, four days have gone by; the first thing you know there are no more lien rights. I think, more serious than that, that there would have to be a policy of notices adopted by materialmen, and I'll say this, fellows, the material dealers are reluctant to adopt a policy of notifying the homeowner and creating a question in the mind of the homeowner that the contractor may not be the choice that he thought he was. What is going to happen when this owner picks up the mail and finds a notice directed to him stating simply that in the event the person with whom you entered into an agreement and placed your confidence, doesn't have our confidence. That's exactly what you're saying to him or what the materiamen would be saying to him. If the materialman had confidence, in the eyes of the homeowner, there's a difference, the homeowner would say "Gee, did I pick the right fellow?" There's a lot to think about there. The other side of the picture is, the material dealers take the view that the lien rights are immediately out

the window. I'm telling you just the opposite of what I said a minute ago. You are going to have material dealers who are going to take advantage of the situation when Mr. Contractor walks in and he says "I'm going to take my business someplace else." You fellows are asking for it, but you're not really going to like it. So the materialmen or your smaller materialman then is going to say, "Well, I guess maybe we can do business the other way then; we won't send a notice." So we resolve into this, then, that the materialmen will divide between themselves. They will use the notice bill, not as a credit agent, but as a gimmick for getting more sales.

Coming back to the original, we're willing to support any type of legislation which will place the burden where we feel the burden properly belongs. And in line with the protection for the owner of the property a bill was drafted by the Credit Managers Association of San Francisco, approval of San Jose, also approved by the attorney for the Board of Trade, has been placed in the hands of Don Grunsky, and I'd like to call on Austin Zelmer to read the bill that he has presented.

AUSTIN ZELMER: My name is Austin Zelmer, I'm chairman of the San Jose Chapter of the Northern Central California Credit Managers Association. I am also credit manager of Central Supply Company, a building material firm which has building material yards in the Monterey Bay area.

I feel that I've had some practical experience with the present problem as a building material dealer. In that respect, working with the Credit Managers Association we have endeavored to develop a bill which we felt would serve the purpose, that is, to protect the homeowner, in the light of this problem which was created in Southern California some years ago. If I may, I will read the bill which we prepared, and it will give you some of the reasons why we think it has merit. "Any public or governmental body or agency having the right or authority to issue permits or approval for a work of improvement, as defined in Section 1182 of the Code of Civil Procedure, shall be required to send notice in writing to the owner of the property to be improved at the time such permit is issued or approval granted, said notice to be sent to the address of the owner as shown in the building permit. The notice shall, in general, contain the following statements:

1. That all materials used and services performed in the work of improvement become a lien on the property as provided in the Mechanic's Lien Law until paid or until the time within which to file claims of lien shall lapse.

2. That the owner of the property to be improved may require the general contractor and/or subcontractors to furnish a bond with good and sufficient sureties, as provided in Section 1185.1 of the Code of Civil Procedure.

3. That the owner of the property to be improved may require a waiver of lien rights from the general contractor, subcontractors and materialmen and laborers for services performed and/or materials supplied at the time payment is made for such services and/or materials.

4. That the owner of the property being improved may demand, and the general contractor shall be required to furnish, a list of the names and addresses of all the subcontractors and/or materialmen furnishing

services and/or materials in the work of improvement, where such services or materials to be furnished by any one subcontractor or materialman will in the aggregate amount to more than \$200.

5. That the owner be advised to seek competent legal or professional advice to protect his interests.

Now, this proposed bill was submitted on April 11 to Senator Don Grunsky with the letter of enclosure, and Senator Grunsky said that he would submit the letter and enclosures to you, Mr. Bohn, to be read and I presume to be put in proper form for introduction, and that's what's been done with it, and here are the reasons, from that letter, why we prepared this proposed bill.

1. The prospective builder of a home or any other structure for that matter should be informed of the fact that materials and services used on the work of improvement constitute a lien on the real property subject to certain qualifications. He should also be informed that he can request a bond to be written, protecting his interests. He should know that he has the right to demand waivers of lien rights from the general contractor, subcontractors, materialmen and laborers at the time his funds are paid out. And that doesn't apply to the fourth or the fifth payments; it applies to any of the payments from the beginning, to the very first payment. He should be entitled to know who the subcontractors and materialmen are for his job so that he may satisfy himself that his funds are being used to pay for materials and services on his work of improvement. He should be advised to seek competent legal or professional advice. I'm speaking of professional advice which generally the homeowner gets when he is dealing with the bank where he is getting his construction loan funds and no doubt he is getting his final loan from a bank or an insurance company and those people know the lien laws and matters pertaining to them and they can well advise such a person, we realize that, to protect his interest.

2. Timely notice should come to him from the source which could be depended on to furnish such notice. Since most of the trouble appears to stem from inadequately financed or dishonest contractors it would not appear logical to rely on these parties to furnish the owner with information of a kind which he could use to protect himself. Now, what we have in mind here is this: We think and we have reason to believe that most, by far the greater percentage of, general contractors, subcontractors and materialmen are honest. I don't think there's any question in the minds of any of us, but generally speaking most of us who are out in the industry are endeavoring to control what we feel is a comparatively small segment of the industry. That's where our problem appears to lie. So, in that connection, we think that notice should come to the owner from the source he can depend upon to get it and he would know what he should need to do to protect himself or know where to go to get the information to protect himself. If, as in most cases, this owner is dealing directly with his contractor, he doesn't know his subcontractor; he doesn't know his materialmen. They mean nothing to him. So, logically, the owner, when he gets a notice such as is proposed in these other notice bills we see, is going to go to his general contractor. Now, of course, most of the time he's going to be an honest general contractor and he can give him an honest answer. We're not trying to protect against that. We're trying to protect

against the small section in the industry where we find the problem involved. In that case he goes to that contractor and what does he hear? This contractor will tell him, "Pay no attention to that; you're the man I'm dealing with. I'm responsible to you for all of these things. I'm paying these bills. You depend upon me to take care of your problems for you." So, the owner in many instances will be satisfied and he'll disregard this notice. I don't think a notice bill, if it's intended to protect the interest of the owner, will accomplish that because, as I again state, it is created in only a small section of the industry, and in that section again a contractor can't be relied upon to represent to the owner the manner in which he should properly protect his own interest.

Now, getting along to the notice bill as it would affect the material dealer. We haven't made any careful analysis but just roughly speaking, from our own experience, in our own area, I believe that we probably filed one claim of lien on every 200 jobs on which we furnished material to service it. It would cost us considerable money if we have to furnish notices to the general contractor and the owner on those 200 jobs in order to protect ourselves on only the one job on which we may have an interest. We would have to hire extra clerical personnel to go to the office which issues the building permit in order to get the name and address of the owner and the general contractor. Remember, we very frequently are dealing only with the subcontractor. Therefore, we would have to get that information, so we would have to hire people to do it. We would have to prepare those notices and we would have to mail them by registered or certified mail. All of those things cost money, so that in order to protect one lien in 200 for our company, and of course for the year, we probably, in our small company, in our small area, would be spending about \$12,000 per year, which seems to be a rather substantial sum of money to accomplish something that we think could be better done in some other manner. We definitely don't feel it would help or benefit the owner if he is the person we are primarily seeking to protect, because he is the person who has the least knowledge of the Mechanics' Lien Law.

TOM SAMUELS: These bills are not in their complete form; we are presenting them for thinking. Building Material Dealers Association, San Jose, presented a bill which is practically identical to the one read by Mr. Zelmer. We hadn't had a meeting prior to the time. All the others recited that the building permit must be signed by the owner. At the May 8 meeting, at the request of Les Miller, we changed our thinking there on the owner for the reason that apparently a bill was put up in 1957 requiring that the contractor's license number be shown on the building permits; so, following the thinking of Mr. Zelmer and on the revamp here, we have come up with the thinking that a duplicate copy of the building permit be mailed to the owner by the public agency issuing the building permit. Pertinent information advising the owner of the owner's responsibility and liability shall be enclosed in the envelope with the building permit. This section shall not apply if the owner of the property and the contractor are the same. Now, we present that along the line of original thinking that we are trying to do something to protect the owner. I don't mean to throw this up as a smokescreen, that this is the end of it, that we are not willing to sit down and further

discuss the problems of the contractors and do everything we can to come up with something that's going to help you along the other avenue of approach, which I think the opinion is, the type of bill that has been presented to protect the contractor and not do too much for the general public. Gene, would you like to add a few words?

EUGENE BOOKER: I am Executive Secretary of the Northern California Ready Mix Concrete and Materials Association with offices in San Francisco. I think Tom perhaps hit it on the head when he said that his group felt that the responsibility for any correction of a weakness in the present subject should rest with that section of the construction industry that is essentially weak, that actually causes the trouble. Our group is very, very strong. In their opinion this thing should be corrected within the contracting and subcontracting end of the business, that the onus of responsibility should not be passed on to the material dealer.

We don't think that any legitimate contractor objects to the present lien law on account of any dishonesty on the part of any material dealer. This thing, as far as we are concerned, I repeat, should receive its correction, routed back where it belongs, and Tom and Austin Zelmer and the rest of us have discussed this thing at considerable length, and what we have suggested here is merely a suggestion by which all of us might work toward actually correcting it without working a hardship on anybody in particular. I think it resolves itself further into a problem of proper credit handling. We have here, for example, Dick Collins, who represents Pacific Coast Cement and Aggregates, about as big an outfit in the material supply end as you'll find anywhere, and I think our spokesman, Tom, will probably call on Dick for the voice of experience. A lot of us don't know much about the actual goings on in the field. It's all very well for us to sit in offices somewhere to dream up things, but I think that men in the field are the people who really have the answer to our problem.

DICK COLLINS: My name is Dick Collins. I'm with the Pacific Cement and Aggregates, with headquarters in San Francisco. We have considerable interest in this thing. I think that Gene stated it correctly when he stated that we perhaps deal with as many contractors as any other organization on the Pacific Coast. Certainly, we have their interest at heart. According to my last count, I think every year we deal with some 8 or 10 thousand accounts, 50 percent of which we could classify as being contractors in one form or another, such as home builders and various types of subs. We don't have too much difficulty with this problem. The reason is that we examine our risks when we take the account on as thoroughly as we know how. We stay in close touch with the general. If the sub is going sour, we work with the sub as closely as we can. As a consequence, there are very few liens filed, considering the volume of business we do.

Now, going a little further, I think that the contractor and the subcontractor and anyone else interested should do a little closer credit examination himself and we wouldn't have these dire results which you gentlemen from Southern California relate. It's unfortunate to hear that there has been such sad experience down there. We don't do a perfect job up in this section of the State, but I haven't heard of anything to compare with what you're faced with. The simple correction

of it would be to be a little more careful on the business of extending credit. The builder should watch out a little more closely perhaps in connection with his subs and we wouldn't have this difficulty.

As to the proposed notice bills themselves, we share the view that this would be more or less putting the monkey on the materialman's back. We don't favor it. If any compromise legislation is necessary we'd go along with that, but we don't believe in burdening any particular segment of the industry in order to accomplish a result. I again repeat that if everyone along the line paid a little more attention to the business of extending credit we wouldn't be gathered here today. The Mechanics' Lien Law does a pretty good job.

TOM SAMUELS: I'd like to ask Jack Pomeroy of the outcome of the meeting that he had with his group, the Lumber Merchants Association. The last time I talked with Jack he was on his way to Washington, and he hadn't completed his meeting yet.

JACK POMEROY: I'm Jack Pomeroy with the Lumber Merchants Association, Northern California, and I would like to go on record as favoring the highly important remarks that Tom Samuels has made in this proposal presented by Mr. Zelmer. Our group feels that the notice bills as heretofore introduced put too much of a burden on the materialman and make him a credit man for the contractor. I had an opportunity, last week, to talk with the New Jersey Lumber Dealers Association, who had just gotten a five-day notice bill put through, and it has caused a great deal of concern and dissension in the industry in New Jersey, and they're running around now trying to find ways to amend the law or get it out.

TOM SAMUELS: Most of the organizations and associations that I mentioned in the beginning are represented here today, and I am wondering if any of you would like to speak or add to anything that I have said here?

HERM NELSON: I am Herm Nelson, Peninsula Builders Exchange. I wanted to make a remark here that in our group, speaking in behalf of Mr. Samuel's remarks, we do not want to minimize the problem that has been presented by Mr. Ross and his group. One proposal was made here about shortening the length of time for notice to five days. It was stated that the title companies could arrange to get the notices of completion recorded within two days and that it would be necessary also for many people to subscribe to some such service which would be mailed to them each day. That type of service, on the average, costs about \$12.50 a month.

Most contractors work in two or three counties, many contractors work in four, five or six counties regularly, so that they would have to subscribe to four or five different services. I don't know how many active contractors there are in the State of California, but just for the sake of figures, let's say that 80,000 do have to subscribe to such services. We do know now that the *Daily Pacific Builder of Southern California* or the *Recorder* or whatever it is have a number of clients but we know that their clientele is a very small segment of the construction industry. But let us say that 80,000 contractors have to subscribe to this service, times \$10, that would be \$800,000 a month, and as we know, most contractors operate within two counties, that would be \$1,600,000 a month times 12, that would be \$19,200,000 for such services.

I understand and I mentioned this morning in our little informal meeting over at the hotel, that there would be considerable confusion in the industry among the subcontracting group if this notice bill were to be put into effect, and before the year was up they would be scrambling to find ways to amend that bill or to avoid it altogether. Mr. Pomeroy, very fortunately, brought you a factual report of such confusion in another state.

E. R. HIPKINS: I am Mr. Hipkins of American Forest Products Company in San Francisco, supervising general manager of a chain of retail yards. As a matter of information I'd like to pass the proposal. As I understand the discussion here, all shooting at the indirect supplier, is there any thought behind the proposal for the direct supplier, wherein the direct supplier would possibly enjoy the same position he holds today or will he be, in return, subject to the five-day notification?

MR. MCGILVRAY: What do you mean by the direct supplier?

MR. HIPKINS: I mean by the direct supplier the lumber dealer, who, when he buys his material from the source of supply, the source of supply has no claim on that material after it reaches the retailer. He, in turn, when he sells it to the job, is directly responsible for collection.

MR. MCGILVRAY: There is nothing there that would change that basic thing where you're selling through, let's say the retail yards, you have no lien rights now.

MR. HIPKINS: Sure we have, on the point where we buy our materials we pay for it, anyone whom we buy for, whether it's lumber, building materials or what, look to us for their bill and do not go through us with lien rights.

MR. MCGILVRAY: Well, there's nothing to change the basic law here, nor is there any intent that in order to have a mechanics' lien it must be sold to and consumed in the job.

MR. HIPKINS: I class the indirect supplier, such as the plumbing company, the manufacturer who inventories the job and sells through, you might say, a licensed union journeyman acting as a business man who —

MR. MCGILVRAY: I don't quite follow you at all.

MR. HIPKINS: They can lien through him to the job.

MR. MCGILVRAY: They would still have to. The only one who can lien the job is the man who sold the material or put the labor into the job.

MR. HIPKINS: All right, how about the building material dealers who sell to the subcontractors on the job? They lien through the subcontractor.

MR. MCGILVRAY: No, they lien themselves or the sub would lien. Unless they sold directly to the job they have no lien rights. We're not making any basic change in this proposal at all. For instance, claim company puts a stock of plumbing supplies in a dealer. That's not sold to the job. Maybe the dealer will put in 10 or 12 houses. He'll plumb that house. The claim company has no lien rights.

MR. KNORP: Ken, perhaps he means the interest of the manufacturer delivering directly to the jobsite.

MR. MCGILVRAY: That's still there if he can show that he sold and delivered to the jobsite.

MR. HIPKINS: Then he's still the plumbing contractor but delivers directly.

MR. MCGILVRAY: He has the lien right when it's sold and used and consumed on the job. As I say, there's no basic change in the fundamental law. There's no attempt of that here at all.

AL KNORP: I am Al Knorp, Home Builders Council. I think what's in his mind might be this, that the lumber dealer who sells directly, in many cases, to the general contractor, is that your point? I don't think he needs to give notice then.

MR. MCGILVRAY: If you're dealing directly with the contractor who is getting the job, but I think under this bill he must notify the owner unless the owner is the contractor because what we're trying to do is to protect, to some extent, this owner, and that was one of the reasons back of the bill.

MR. KNORP: I think this was back of his question, not where you're selling directly to the general.

MR. MCGILVRAY: So our position would also be known, as long as we will not agree that the period should be cut down from 20 days to 10 days—our position is that the 20-day period is necessary.

TOM SAMUELS: Is there anyone else who wishes to speak? If not, for the record, I would like to insert a few observations. In talking with contractors I find that the successful contractors now require the subcontractors to show evidence of the material in use on the jobs being lien free. Also, subs should be picked or are picked for their financial responsibility as well as their ability for workmanship and performance. Contractors now have the benefit and have the right to require any subcontractor to be bonded on any particular job.

What I'm getting at is that business should be operated on a good sound fundamental business basis, whether it be contracting business, a lumber business, a plumbing business or the grocery business, it makes no difference. You set up your sound fundamentals. I will agree that most of the large subcontracting firms do not hire creditmen. Materialmen do, but just the same I was surprised at the number that check and make sure that the material is lien free before they pay their bills. I will leave you with a last little thought that we will be very happy to sit down with you and come up with something that is to your benefit and to the benefit of the entire industry.

AUSTIN ZELMER: In connection with Tom's remark about being lien free, again speaking from the standpoint of practical experience, we have worked with a number of our general contractors and subcontractors on the basis whereby the general contractor requires from us a receipt and waiver of lien each month for the materials furnished for this particular subcontractor on this particular work of improvement during the course of the preceding month. It has worked out, from a practical standpoint, in a very satisfactory manner both for the general contractor, the subcontractor and ourselves as materialmen, and wherever that method has been followed there have been no losses and no problems. I'm sure the building industry would be very happy to co-operate with the general contractor and subcontractor along that line, but to me that is definitely a credit problem which should be handled as a credit problem within the various segments of the industry.

It does not appear to be a matter which can be legislative, to handle the credit problems of an industry.

MR. COLLINS: I want to reiterate what Austin says. We get calls every day from contractors, checking on the same information. They're conscious of their responsibilities under the lien laws and we're very happy to work with them. It's an old habit with us, because we've had a close relationship with the general. I don't see where the trouble rises. The general feels free to call us, we always give him the estimation as to the condition of any liability that might be against his job as far as we're concerned.

MR. BOHN: Gentlemen, before proceeding I will call your attention to the fact that it is approaching the hour of noon. Would you want to adjourn now or can we work until about one o'clock in the hopes that we might be through by then? Or am I overly optimistic?

MR. MCGILVRAY: I think you're overly optimistic. We would like to discuss some other measures that were before the Legislature, one of them being a bill that was introduced by Senator Arnold, which would require a mandatory bond bill or a mandatory escrow in private works the same as you now have in public works. There are some luncheon engagements that I know have been made and I think it's going to be a little difficult to keep on working.

MR. BOHN: Well, then, in just a few minutes we will call for adjournment. Let me call to your attention the fact that we now have a supply of the bill involving public works, which was discussed earlier. I'll leave it on the desk upon the conclusion of this meeting this morning and anybody who wishes a copy is welcome to it.

Now, just a few minutes before adjourning, Mr. Ross would like to make a few observations and then we will continue after lunch.

KEN ROSS: Thank you, Mr. Chairman. I am Ken Ross, Southern Chapter Associated General Contractors. I wanted to make only one comment and I won't speak in any general rebuttal to what has been said, but in reference to the suggested bill requiring certain information regarding lien rights to be made available to owners who apply for building permits I would like to make this comment before this subject gets cold and we get into other subjects this afternoon.

Our chapter has met and generally reviewed this proposal by the San Jose Building Material Dealers Association and we agree substantially with what we believe they are trying to accomplish here, that certainly the owner should be made aware of his lien rights and probably would generally support a bill of this nature. We think it could be done quite easily by perhaps printing on the back of the permit the various elements of the lien law which affect them and pointing out their rights under this law. But we would like to point this out, particularly under subsection 4 of your proposal. We feel that it gives some help to the owner, relatively little help, but some help to the owner and the help that it does give he certainly should have and we would go along with it, but it does absolutely nothing for the general contractor. In fact, in its present form I assume that it would be unconstitutional, because it requires a list of materialmen and subcontractors here from the general contractor when he has no knowledge of the materialmen and sub-subs that he's dealing with. That, of course, is the basic issue that we are trying to get at in our whole proposal here, and

that is to determine who materialmen are and sub-subs are when the subcontractors with whom we are dealing do not wish to divulge this information to us so any law that the Legislature would pass requiring the general contractor to give to the owner a list of materialmen and subcontractors who are on the job would be completely ineffective, inasmuch as the general contractor has no way of determining who these people are, and that, in effect, is the very thing we are trying to determine by our bill.

AL KNORP: I would like to make one statement to these gentlemen before they go to lunch. If it was as simple as that we wouldn't be here. If we could just pick up the phone and call Pacific Coast Aggregates there would be no need for this, but there are material dealers we can't dig up. We don't know who they are; that's why we want to know. This situation doesn't hold in Northern California in nearly the proportion that it holds in Southern California. I think you might recall a hearing, Mr. Bohn, in Santa Barbara, a dealer who had made a career of trying to find out who a plumbing contractor was and the supplier was hiding that information. That's the reason we're here. It's not the gentlemen like you who will answer us and who deal aboveboard. We're trying to get the materialmen in the South who are covering their trail and covering it pretty cleverly.

TOM SAMUELS: I'd like to clear a point here. This bill is thinking only, and what we're trying to do here is to come up with something to inform the owner of his rights, responsibilities and liabilities. I don't think, in the form that you look at it here, that it's in the completed form. And certainly it is not intended to cover what you gentlemen started with here this morning in your bill to protect the contractor.

We're taking it in two steps, a bill here to come up first, with something that the legislators want, and that is something which will put the owners on notice and protect the owners. We are perfectly willing, and there are many thoughts that can be discussed, and I am satisfied that what you people want can be had and it should be in a separate bill, not tied into the notice to the general public. We are perfectly agreeable; we'll sit down; we'll work with you. All we ask is, as Dick Collins says, "Don't put the monkey on our back." If it's the subcontractor who is giving you trouble, let's put it on his back.

MR. BOHN: I think there was one gentleman who had a comment or a question.

MARVIN A. BERLINER: My name is Marvin A. Berliner, credit manager for San Mateo Feed and Fuel Company, with five companies in San Mateo and Santa Clara Counties. I'm very much in accord with what Dick Collins says. From our viewpoint and what I'd like to get over is that the general contractor takes on a job and becomes an agent for an owner. He is the owner's representative and I think that it's up to the general contractor to see that all of the owner's moneys are accounted for, not the material houses'.

MR. BOHN: Thank you for your comments. I think we are about ready to close the subject of the agenda which we started this morning. However, I'm sure that there will be a few closing remarks which some of you will wish to make after lunch. I think particularly the proponents of this measure should have the customary right to close and to present their views after having heard the opposition. Therefore, at

this time, we will ask if there is anybody on the affirmative side of this issue, the one generally advocating passage of this notice bill, who now wishes to close.

WALTER KEUSDER: On behalf of the Home Builders and the Southern Chapter of the A.G.C. I am very happy to hear that in one section of the State the material dealers and suppliers are so cognizant of their responsibilities in passing credit that they practically have no use for the lien law. I presume they wouldn't have much objection to having it repealed since they picked their credit so well, but, unfortunately, that is not true in the southern section of the State. We have a tremendous number of material dealers, many of them small, hungry for business, some of them rather unscrupulous and many of them are carrying subcontractors and/or contractors that they well know are inexperienced, financially unreliable, but they rely completely on their lien rights. That not only applies to the small ones; it applies to some of the larger ones and some of the better thought of ones. It happens that I probably spend as much of my time in the subcontract and material end of the construction business as I have in the general contract end and have had a great deal to do with credits on the other side of the fence.

I know that a great many creditmen in the South will tell you in confidence that their credit job isn't determining how good the contractor is, it's determining how good their lien rights are and where the money might come from if they filed a lien on a specific job. Very few jobs do they deliver material on without finding out who the owner is before they deliver it and what kind of financing there is on the job. We used to keep a particular card on every job. If we sent material out on a job we had the owner's name listed, the legal description of the thing, how the financing was, and every day we perused the *Southwest Builder* reports that picked up all the notices of completion that were filed and if that bill hadn't been paid within a few days of lien period, out went the lien. I think most of the organizations already have the information or obtain it at the time they send the material out on the job. We always used to, in the southern part of the State. I won't attempt to answer for the North, but I understand there are similar services. It costs us about \$3 a month. We have it as a general contractor, and I know that all the material dealers subscribe to the *Southwest Builder* and *Contractor Green Sheet Service*, which lists, every day, every instrument that was filed with the county recorder in all of the southern counties the day before or, in the case of remote counties, maybe two days before or three days before. Notices of completion are listed there with the owner's name, address, the legal description of the job and the contractor's name. I see no problem at all, from an expense standpoint, of utilizing that information that the average creditman demands when he sells a job for the purposes of sending a notice. I think that it would be no burden at all, and I think that the gentlemen who spoke this morning do not realize the number of third-party claims that we have in the southern section. Certainly, if we have a plastering contractor and we know that he only buys material in one place, it's a simple matter for us to request releases from that plastering contractor from those particular suppliers. But in the last couple of years it has cost our company several thousands of dollars to pay claims that other-

wise would have gone to lien against subcontractors from suppliers that we never even heard of and couldn't find out about.

In some instances they were subcontractors of the subcontractor, and in one or two cases we've been able to recover from the subcontractor, but a plasterer, we'll say, buys most of his material from a certain source, but his credit is getting a little shaky and they are about ready to close down on him, so he goes to some other source. He doesn't tell us about the other source. We think we have releases from his suppliers, and all of a sudden we wake up after we've paid him off. In order to close the job out and clear it of any possibility of any liens being filed we find at the last minute that he bought some material from various other organizations. The same thing applies in the plumbing field. We've paid third-party claims in the plumbing field on plumbing contractors who assured us that this was where they bought their material. We get releases from them, and then at the last minute we have requests for payment from third parties whom we never heard of that he hasn't told us about.

I could go on and enumerate many instances and document them, but that would be taking too much time at this meeting. Suffice to say that it's the third-party claim that we and the owner cannot find out about that we are attempting to solve with this notice situation and while it won't solve the problem of the fellow who did some work at the beginning of the job and he was paid off, that the material dealers carrying him around on all the other jobs and finally he can't carry him any longer and he goes back and liens our job because he still has a lien right on it, but it will solve, to a large extent, those claims at the tail end of a job where a contractor, subcontractor, or sub-subcontractor is getting shaky and finally the materialman or some third or fourth party that neither ourselves nor the owner ever heard of and can't find out about comes in with a claim after the job has been paid off.

MR. MCGILVRAY: Mr. Dean, representing the parties who put this original bill in has some comments to make on Mr. Keusder's amendment, Section 4206 of the Government Code.

J. M. DEAN: I am J. M. Dean, Secretary-Manager, Building Material Dealers Credit Association. Our legislative committee met last Wednesday afternoon. They studied this proposed amendment very thoroughly and frankly can see no necessity for it right now. In fact, sitting on the committee Wednesday afternoon was one of the bonding company representatives, and he said he feels definitely that there is no necessity for it now. Not to go into history at all, but the original law as it stands today was put in at the request of the surety companies and the bonding companies, and I think before we would go very far with anything like this we should certainly sit down with them and find out if it's something they would like to have or not. We have no great objection to it other than the fact that we can't see where the necessity for it is today. We have no record of it in our office.

WALTER KEUSDER: Maybe if I give you one specific instance I could give you many of them, but I will give you one specific instance of what we're trying to plan. M. J. Brock and Son, I'll name names and you've probably heard of that instance, where Westinghouse came back five months later and collected something like five or six thousand dollars from them for a specific piece of equipment that went on the

job when they had made every effort to find out who furnished everything on it before they paid the subcontractor off. They got releases from every place they could find, and five months later Westinghouse came along and said, "We furnished some material on that job and we haven't been paid for it."

J. M. DEAN: I had the whole story on that, backward and forward. There are two sides to that story too.

WALTER KEUSDER: Well, that may be but that is the type of thing that does happen today.

MR. MCGILVRAY: We are of the impression that we would still take the same position, that we don't want the double payment or, as someone has said, payment and a half, but we feel that this might interfere with the various provisions on withholds and they're very technical, but if the basic idea is that you're trying to do on public work the same thing that you do in private work, our feelings are that it is not necessary and that if it is then we'd have to redraft the whole thing in along with the many, many other Government Code sections that have to be taken into consideration.

WALTER KEUSDER: We have no private losses yet in this, it's merely attempting to solve the same situation on that side and we'd be very happy to go into it with the bonding companies and any solution that can be arrived at would certainly be satisfactory to us. We're not stipulating that this is the only answer.

AUSTIN ZELMER: In answer to the gentleman's remarks relative to the method of getting the information as to the owner and the general contractor, it sounds like they are using an excellent method in Southern California. Unfortunately, that same method is not available to us in the counties in which our company does business, Monterey County, Santa Cruz County and San Benito County. So I must reiterate that the expense to us would be as I first indicated and I felt it would be if we were obliged to follow the notice bill in the manner proposed. Also, Ken, in response to what you said just before lunch, as to what I suggested possibly being unconstitutional and I'm not saying it isn't and no doubt it is. I think that if that part of the thing I proposed is unconstitutional then it might be amended so as not to be unconstitutional. My point being that I think we in this room, representing all phases of the building industry, having a common problem, one in which we all have an interest and one in which if we could endeavor to meet and resolve and compromise the issues, if we could come up with something beneficial to all of us and certainly beneficial to the building industry. So again, I have no pride of authorship in what I have proposed here but merely one other idea being put forth in an endeavor to try to do something which will improve and not break the whole situation.

MR. KNORP: How much more would it cost to leave an extra copy of the bill?

MR. BOOKER: Mr. Knorp, what would you propose would be done with that extra copy?

MR. KNORP: Well, that would serve as the notice that the material firm has a lienable claim against the property.

MR. BOOKER: If he furnished an extra copy of his original bill, I mean at delivery time, then it would be the responsibility, I presume,

that the contractor would furnish the owner and the prime contractor with a copy of that bill.

MR. KNORP: I would assume that if you're delivering ready-mix to a concrete subcontractor he would sign or put his signature to a delivery receipt. That does not notify the prime contractor, so on the first delivery the ready-mix truck driver drops off an extra one some place designated on the job by the general, therefore, the general gets his notice.

MR. BOOKER: That doesn't alter the situation after the five-day notice particularly, does it, Al? You presume that the driver would have to deliver that extra copy to somebody other than this subcontractor. Is that correct?

MR. KNORP: Yes, he would deliver it to a point specified by the prime contractor on the job. It would be something in a prominent place where it could be mentioned. Either that, or the materialman could mail a copy of that to the prime contractor.

MR. BOOKER: I would point out to Mr. Knorp that these trucks are worth \$20,000 each. The drivers are paid upward of \$3 an hour, and to divert that truck in any way, shape or form from his schedule of delivering his load and returning to the concrete plant would be a very, very expensive deal.

MR. COLLINS: Another factor is, what about the material that was out on the job or is taken there by the sub? I point out that I hardly think that the suggestion would fit that situation.

MR. MCGILVRAY: I think we would have a great deal of trouble proving that concrete being delivered and we'd have to have a truck driver testifying in case of dispute and that sort of thing, Al, and it doesn't sound like a very practical solution to the basic problem.

PRENTICE MILLER: I am Prentice Miller, Chase Lumber Company in San Jose. We have, at the present time, a four-part snap-out form of invoice that we send out with the material to get the signature of the party receiving the material. We have a delivery copy that is left on the job and we have a customer's copy that we mail to him at the end of each month with his statement. A good portion of our contractors come in to pay their bills and they say that they don't know how much they owe on what because they don't have any paper on it. I think that we would have trouble with this gentleman's idea, because the people who are receiving the material throw away the delivery copy and the contractor hasn't kept a record of the copies we mailed to them. We've had that happen on numerous occasions.

MR. BOHN: Does anybody else wish to make some closing comments upon the bills which were presented this morning?

HENRY ELY: My name is Henry Ely, and as I have stated, representing many subcontractors, we are basically midway between the materialman and the prime contractor. We still feel that this proposed law is a simple law. Reference was made to the New Jersey law and if anyone has read that New Jersey law and compares the law we propose he will see that the New Jersey law is the most complicated, cumbersome law which has ever been enacted in connection with any lien law, to our knowledge. We feel that the New Jersey law does wipe out the lien privileges, in effect, because it is too complicated. Even if

they appointed an attorney from Philadelphia they still couldn't work out that New Jersey law.

This is a simple law. We also feel that the cost will not be unduly great. There's hardly a contractor who is not a member of some association. We envision the fact that a trade association representing any group of contractors will be notified by its members that they have a job with X Y Z and we think that the trade association can easily check the notices of completion and so advise the contractor if he desires to file a notice and I did not mention one other provision that we've changed in the original proposal on the notice law. That was that it could be caused to be given, that the contractor himself did not have to give it, or the subcontractor or the materialman did not have to give that notice himself personally, but it could be given by presumably a trade association or others and we appreciate very much what Mr. Samuels has said about interfering with the relationship between his purchaser and the owner and we have given very careful consideration to that one point, however, we believe that if it becomes a practice, as it must, if it is to succeed, that the notices are given, that that problem will be reduced to a minimum.

We have only one comment on the proposal of the San Jose Building Material Dealers Association, and that is the timing on this notice. We think it is a good idea but, and I speak only for myself, personally, because we haven't taken it up at all, but basically when the permit is obtained the contract has been left with the prime contractor. Basically, in most homeowner situations the prime contractor, after having been selected as the contractor for that job then obtains a permit. So this will come to the owner after his contract with the prime contractor is set and it is helpful, however, it is doubtful that it would do the job. I think there is a slight inconsistency in the Building Material Dealers of San Jose in saying, on the one hand, that the owner will not pay any attention to the notice given by a materialman or subcontractor and on the other hand he will pay attention to this notice to be given by the city or town issuing the permits.

MR. MCGILVRAY: I believe it is perfectly true that even though when the case of the notice bill to which you referred there, Mr. Ely, is the one being introduced by us that the owner will pay very little attention to it, but I think that the mission has been accomplished by what has been required by the Senate Interim Committee and so notified, I think that the legal aspects of it have been covered.

MR. BOHN: Gentlemen, if it's agreeable with all of you we will close the discussion on this phase unless somebody has something new they wish to add, the reason being that there are several other bills to take up.

MR. BOOKER: The theme of the meeting when we started this morning was set by Mr. Bohn, I thought, and I was under the impression that the agitation for a notice bill of any kind or a change in the lien law of any kind was brought about on account of a grand jury investigation of certain conditions in Southern California which resulted in that grand jury calling for action by the Senate Judiciary Committee. The general idea, I thought, at that time and I know the premise that we have been working under was that something had to be done or should be done to protect the public. If that is not the

premise that we are operating on I think that we should know it. If the whole purpose of this proposed legislation is to do other than to protect the general public I believe we should have it out on the floor and that the Senators who are considering this thing or will consider it should know full well that the protection of the public, if anything, is incidental to the proposal of the bill, not a cause of such a proposal, but incidental to the proposal.

MR. BOHN: I would like to do two things at this point, if I may. First, I would like to acknowledge receipt of the letter which Mr. Zelmer referred to earlier that had been sent to Senator Grunsky. It is dated April 11, 1958, and Senator Grunsky has, in fact, forwarded the letter to me for the purpose of having me bring it to the attention of the subcommittee which is concerned with this subject matter. That will be done, of course, when his thing comes to a hearing.

Secondly, if you would permit me to do so at this meeting, which is primarily an industry meeting, to make an observation or two I would hope that it might be helpful in these groups getting together and working out some plan which is in common agreement. Over the years there have been presented generally two parallel lines of bills to the Legislature, among others. All parties seem to agree that something should be done, if possible, to protect the public in view of the rather unique nature of the lien law as compared to other types of credit transaction. But in the past groups have taken diametrically opposed views as to how this best should be accomplished. In one instance there has been a group which has advocated a compulsory bond, I gather we're going to discuss that further this afternoon. Another group has advocated a very stringent notice provision, in effect telling the owner to beware that something may happen that he is not contemplating.

Over the years, each time the bills have been called up for hearing the respective groups affected would each present their own particular point of view with the end result that no specific accomplishment has been reached. I would be hopeful, therefore, and I think I speak for members of the committee that each side of this economic problem would be able to give a little to the point where some sort of bill could be passed which would accomplish part, if not all, of the purpose which everybody is trying to take care of. I think, without that, we face two dangers: one, that nothing will be done, and secondly, that in the event of further or large scandals, which I presume could occur, that some other type of action might be taken which would be equally disadvantageous to the public and the industry as well. So from this particular type of legislation I think that the members of the committee, both the Assembly and the Senate, are concerned that industry is completely protected and yet at the same time that the somewhat unusual situation, where I think we're all familiar with the basic facts, namely that the home owner's credit is individually, normally not good for anywhere near the amount of money which is involved in the purchase of a home and where if we were dealing with a department store the department store might approve his credit up to two or three or four hundred dollars, it would be completely out of the question for the department store to give him credit up to 10, 12, 15 or 18 thousand dollars.

A person just doesn't have the money to back it up or the assets. So we find the situation that everybody in the transaction, the supplier, the contractor, the owner and the subcontractor are all depending upon the proper allocation of funds, which is obtained, of course, by a loan and the homeowner is faced with the situation where he has been used to buying automobiles. And he has been accustomed to buying other types of credit transactions and when he pays for them the transaction is complete. Whereas, in this situation, of course, it is not only theoretically, but actually the situation that he could fulfill his own contract and at the same time by virtue of a default on somebody else's part be forced either to lose his home or to have to pay more than originally contemplated.

As I indicated earlier, it has been my view for a long time that the interest of the homeowner and the interest of the contractor and of the material dealer are identical because while my experience is infinitesimal compared to the experience of the men in this room, in my 25 years of legal practice I've seen a good many lien suits and I've never seen one where everybody came out with a hundred cents on the dollar. Sometimes it gets close to that but then there is the expense of litigation, the loss of interest, the time-consuming nature of the proceeding, so that I say in many instances perhaps that I've never heard of that happening, but in all my experience no one has ever received all his money—usually the market goes down or something happens.

I hope you will forgive those observations. It is not my duty or my position to argue for or against any of these measures, but I do think some of the comments I'm making are on the minds of a good many people so I took the liberty to make them myself in the hope that they might help all of you get together and try to work this thing out. By way of recapitulation, I take it that substantially what was said this morning was this, that with some necessity for reconfirmation, the associated contractors and related groups are substantially in favor of this measure. The material dealers of Southern California are substantially in favor of this measure and I take it the groups listed by Mr. Samuels are, in general, not in favor of the measure, at least in this form. Is that a fair summary of what the situation now is, or does anybody wish to make any corrections on that point of view?

MR. COLLINS: Is it correct, Jim, that the material people in Southern California favor this legislation?

MR. DEAN: We are in favor of some type of legislation which will do just what Mr. Bohn has outlined here a minute ago, protect the supplier, the contractor and the homeowner. Primarily due to the fact that I have in front of me right now a report of the criminal complaint committee, that the grand jury in 1953—that's where this all started, and we are committed as going on record that we are in favor of some type of legislation which will amply protect the homeowner. Now whether it is just as it is here, I wouldn't say, but it has to be properly worded and corrected, etc. In substance and principle we are in agreement along that line.

MR. BOHN: I must add this one observation, that it is my feeling, for whatever it's worth, that the groups involved are closer today than they have ever been in the years which I have been dealing with the problem. I feel that there is certainly some disagreement, but I have

never heard the opposing groups get as close together as they seem to be today. As I understand it, those who do not favor this bill in this form nevertheless feel that there may be some merit to the idea and they are willing to pursue it. As I also understand, the representatives of the general contractors, although they disagree with the text of the bill notifying the owner of his potential problems, nevertheless say, in substance, that we are not completely opposed to the idea with some modifications.

Now, if that is a fair statement of what has been done here then it is my view that we have made considerable progress and I would hope that the affected groups would get together. At least, if we can do this gentlemen, you will be doing a great service to the State and to the Members of the Senate if you could narrow the items of disagreement between now and September so that we might have a debate upon just the very narrow points of disagreement. I think that the areas of agreement are far greater than those of disagreement and I would sincerely hope that between now and September the differences might be resolved. If not, that they might be minimized and then perhaps the members of the committee, all of whom are very experienced, might be able to make a suggestion or two as to a kind of middle ground which would dispose of this whole problem. Are there any further questions?

MR. DEAN: Mr. Zelmer's bill—in principle, we can see nothing particularly wrong with it as far as we're concerned.

MR. BOHN: That was my hope. I think that a few more conversations between the attorneys might thrash the thing out.

ORVILLE EASTMAN: Mr. Bohn, may I direct a question to Mr. Dean. I am Orville Eastman from Legislative Committee Retailers Credit Association, Building Material Dealers Division here in Sacramento, and I don't think it has been clearly stated, Jim, as to what particular portions of this new bill as it has been changed here today that you're set against. I know that principally you're in favor of it, but there are certain items that I feel possibly you're definitely not in favor of and I don't think you've stated that.

MR. DEAN: I wouldn't want to make that statement because I haven't seen the proposed change that Mr. Ely has suggested. I would want our committee to go over that bill thoroughly and if there are objections to it we would naturally tell Mr. Ely about them, as we always did, but I'm afraid I can't answer that right now.

MR. BOHN: It was my understanding that one of the things you objected to was the change from 20 days to 10 days. Mr. McGilvray made that point clear. That is the type of disagreement, gentlemen, that I think the Senate Judiciary Committee could resolve very quickly if that's all we disagreed on.

MR. BOOKER: Just how far has the Northern Chapter of the Associated General Contractors gone and how far has the Central Chapter gone in actually promoting the bill that has been under discussion? Have they taken no position or have they said that they will not oppose the bill?

MR. ROTHSCHILD: My name is Bob Rothschild, head of the Legislative Committee of the Northern California Chapter of A.G.C. We feel quite strongly that this notice should be limited to 10 days after the completion notice is filed on the job.

MR. BOHN: If I can interpolate what his question was, he said that in effect are you actively promoting this bill or is this something that you are reluctantly accepting? Is that your question?

MR. BOOKER: No, whether they have actually taken a position, formal position?

MR. ROTHSCILD: Very definitely.

MR. BOOKER: And you are promoting the bill or are you just taking a neutral position?

MR. ROTHSCILD: You mean I am personally promoting the bill?

MR. BOOKER: No, no, I mean the Associated General Contractors, Northern Chapter.

MR. ROTHSCILD: The group of contractors, northern, central and southern and San Diego have a position that they are in favor of this bill.

MR. BOOKER: You're saying then that the northern chapter has actually acted on this and is actively promoting the passage of the bill, is that correct?

MR. ROTHSCILD: The bill has been changed slightly today, so I can't say that they have acted on its final form, but in general, they are in favor of this bill.

MR. BOOKER: I have talked to a number of the general contractors and members of the Associated General Contractors of the northern chapter and they don't know that this thing has been acted on. Those people don't.

MR. BOHN: Gentlemen, does anybody object to proceeding to the next order of business? Anybody feel that he's been cut off, that has something to say? If not then, with your permission, we will proceed to the next order of business and I gather that Mr. McGilvray has an issue he wishes to take up at this time.

MR. MCGILVRAY: I'm going to be very brief and I think that in fairness to certain groups that are not here represented we've passed out Senator Arnold's bill, 2194, 1957 Session, and banks and finance companies that are not here and they would be seriously affected by it. I have a request, Mr. Bohn, that we note the bill for committee study by the various interested groups here and not particularly go into the discussion.

In essence, this bill was introduced in 1951 and continuously since that time but no substantial support could be gained for it. It was never pressed in committee at any time. The bill has been drafted by Mr. Glen Behymer and in 1951 was introduced in his behalf. It was introduced this last year by Senator Arnold, with no pride of authorship on his part. I asked him to introduce it for us, as we say, "to hold a spot," and it's what is known as a mandatory bond bill or a mandatory escrow bill, and you can try reading it and briefly summarized see why banks and finance companies would not like it, why contractors would not like it, and why subcontractors would not like it. It would have the effect perhaps of decelerating building rather than accelerating it and it would put deeds of trust and mortgages second to mechanics' liens unless they had a mandatory escrow or unless they had a mandatory bond on private work.

We've run into so many people who would be opposed to it, including the surety companies, it's a complicated bill and I've just laid it

here for you to take a look at it. You may have never seen this bill. Many of those around the table up here, who are in Sacramento, know what it is. You could take a look at it, and, as far as I know, the bill cannot be successfully passed in 1959 any more than it could be in 1957 or from '51 on.

MR. BOHN: I take it, Mr. McGilvray, from your comments, that you are not necessarily advocating either for or against the bill, but merely that you wish people to look at it.

MR. MCGILVRAY: I think that it should be looked at. It's there, it's a change over, let us say, a great many restrictions on building. After all, we have to look at this thing philosophically, from the standpoint of our clients, the people that you represent. We don't want to restrict building; we want to keep it moving along. We want to have an easing of credit rather than a restriction of credit, and I think that's what was fundamentally in back of the Los Angeles group when they came up with the proposal we were discussing this morning.

One other matter and I don't know if we have to discuss it, I don't have the bills here, but Mr. Ford of the contractors license board would be interested in this phase. In 1955, there was introduced on this question of the contractor and the owner knowing who the subs were, a bill that would make it first of all, under penalty of perjury, that he had to give them a truthful statement of all of his materialmen and subcontractors and also make it a cause of disciplinary action for the contractor to give a false statement. That never got any particular interest, but I just lay it there on the committee's agenda for consideration and for the consideration of industry here. That's about all that I have on these two bills that I did want to bring up because we are all here, but I don't think that we can discuss 2194, because it has a lot of ramifications and it is something to think about, to study, and maybe somebody can come up with something on it.

MR. BOHN: Does anybody want to make any comments on the general principles that Mr. McGilvray has talked about? By way of further background, bills of a similar nature have been, as he has indicated, before the Legislature for a long time and they represented a divergence of views, so far apart that in the past at least, they have not received a great deal of attention during the sessions, although various interim committees have heard the arguments for and against them. I might take the opportunity to mention, incidentally, in connection with interim meetings, that the Judiciary Committee is attempting now to keep rather complete records and they're going to try to report at the time the Legislature is in session something of the legislative history of these various bills which are being considered. We have a small sample of that in the 1957 report, if anybody would like to look at it. It attempts to give some little background and some reason why this person or that person or this group or that group advocates a particular bill, together with a statement of what amendments were adopted and the final fate of the bill with a description as to what the bill is supposed to do. Does anyone else have any comments to make on either of these two matters which Mr. McGilvray brought up?

MR. ELY: Mr. Bohn, might we know when your interim committee will meet next on these matters?

MR. BOHN: Early September, it is my understanding. The date has not been set, but at the last subcommittee meeting, where they took up the subject of eminent domain, generally, it was agreed between the members, and they were all present, that the next meeting would be in early September. The idea being that this meeting of industry was going to be held today, then opportunity given for conference, correspondence, discussion and then a time certain fixed so that the matter can be crystalized as early as possible, so it will probably be the first week in September, but everyone on our mailing list who is interested in this subject will receive a notification of it. If there are no comments on Mr. McGilvray's issues, does anybody else have anything they wish to bring up involving any problems connected with mechanics' liens that could be handled by legislation?

MR. SAMUELS: I would like to bring up a proposal as far as legislation is concerned. This is for consideration of the industry as just another thought and another possibility. This is based on the premise that the State of California requires bonds from people who wish to do business in the State of California. As a quick example I'd say the Board of Equalization would require a deposit unless your credit rating is very substantial before the issuing of a sales tax permit license. Also, as far as collection agencies are concerned, in the State of California it is necessary that a bond be posted with the State before a license will be issued. Following that line of thinking it was presented and discussed at our two recent meetings, that contractors of all classifications shall, at the time of applying for a license, and upon each renewal thereof, supply a bond to the State of California, running for a period of the license and providing for work started under the contractor's license, in an amount depending upon the contractor's classification, not less than \$2,000 and not more than \$10,000. Priority of the demands upon the bond shall first be to the owner, who has been obligated to pay an additional amount established by a lien; second, to the contractor, who has been obligated to pay an additional amount arising from a lien.

In this bill we're thinking of protecting the owner, including protection for the contractor. The amount of the bond shall depend upon the classification, these are just round figures, certainly open to discussion, \$10,000 for a B-1 license, lesser amounts to other crafts. I'm thinking maybe of a linoleum installation man or one who installs lawn sprinkler systems, where the amount would be only several thousand dollars. This bill has several advantages. It has the advantage of many contractors and crafts maintaining a license for a few dollars a year. Now you gentlemen representing subcontractors have a little to think about, that when there's no work and your journeyman is out of a job he has a license in his back pocket and all he has to do is go down and bid on some jobs and be competition to you. The reason he hasn't obtained a job is because business is slow, he's going to operate out of his back pocket and he's going to be able to do it a little cheaper than the subs.

As far as the general is concerned, perhaps I shouldn't say this publicly, but I think it will take a number of the smaller contractors out of the field, it will restrict a bit, and by that I do not mean to hamper free enterprise or restrict the legitimate person who actually wants to go into business. I'm speaking now of your marginal fellow who is going to do a job now and then he's going to work part of the time. I present

it for thinking. It's not a bill, but I think it has possibilities as far as protecting the contractor is concerned. The amount of the bond is small. It is not designed to protect on a large job. It is not designed to protect on a tract job. There again, if you want additional security, fine, ask for the bond, or maybe if you think that \$10,000 is too small we will discuss raising it.

MR. BOHN: Anybody wish to make any comment at this time on that suggestion? Suggestions of a similar import have been embodied in bills in the past and it is something you may wish to think about. Is there anything else that is to come before this meeting today?

MR. MCGILVRAY: In 1957, and Mr. Ford is here and knows or is acquainted with it, there was introduced, I think as a change in the Contractor's License Law that in a case where a contractor went through bankruptcy that his license should be immediately revoked, in due course he is entitled to a hearing, etc. Do you remember that bill? It died somewhere in the committee. But certainly I think there is a definite need for a bill which will immediately revoke the contractor's license when he goes into bankruptcy so he can't go out tomorrow and be a competitor right alongside the next guy.

MR. ELY: While it's not exactly related to the lien laws, it is connected therewith, and the Construction Industry Legislative Council has now under study a new proposal for 1959, which we're not ready to submit at this time, which will meet the objections that the Governor had in not signing the last bankruptcy bill.

MR. MCGILVRAY: I would like to say, I know Mr. Ross will join with me in this and those who have been responsible in trying to get out as many notices, that we're deeply grateful to the Senate Committee on Judiciary for making this room available, making Mr. Bohn's services and his staff available, and I think that when we adjourn we should do so out of thanks to the committee and our deep appreciation for their help.

MR. BOHN: If nothing further is to come before the meeting I know that Senator Dolwig and the members of the Subcommittee on Real Estate and Probate would want me to thank you very much for coming here, and, believe me, the Senate Judiciary Committee is very interested in this problem and will do everything they can to co-operate. Also, this subject matter will again be considered by a subcommittee of the Senate Judiciary Committee on October 7, 1958, at Coronado, California. The meeting is adjourned.

4. HEARING OF PROPOSED MECHANICS' LIEN NOTICE BILL

CORONADO, CALIFORNIA
October 7, 1958

By Subcommittee on Real Estate and Probate. Senator Richard J. Dolwig, Chairman. Members: Senator Nathan F. Coombs, Senator James E. Busch.

The Subcommittee on Real Estate and Probate scheduled this hearing to further consider the proposal presented and discussed at the industry meeting in Sacramento on May 12, 1958, and to determine whether any progress had been made to resolve differences.

Notice of the hearing was given to all interested groups, requesting that they either attend in person or file in writing with the committee their comments and suggestions on the proposal.

The following members of the full committee and subcommittee attended:

Senator Richard J. Dolwig, Chairman, Subcommittee on Real Estate and Probate.
 Senator John William Beard.
 Senator James A. Cobey.
 Senator Nathan F. Coombs.
 Senator Donald L. Grunsky.
 John A. Bohn, Committee Counsel.

The following witnesses appeared and testified before the subcommittee:

Assemblyman Richard T. Hanna.

Eugene R. Booker, representing the Joint Legislative Committee composed of the following: Associated Plumbing Contractors, San Rafael; California Lumber Merchants Association, San Francisco; California Material Dealers Association, Oakland; California Material Dealers Association, San Francisco; Building Material Dealers Association, San Jose; California Rock, Sand and Gravel Association, San Francisco; Credit Managers Association, San Jose; Credit Managers Association, San Francisco; Northern California Ready Mixed Concrete Association, San Francisco; Peninsula Builders Exchange, San Carlos; Santa Clara County Concrete Dealers Association, San Jose; Sub & Material Contractors Association, Inc., San Rafael.

James M. Dean, Building Materials Dealers' Credit Association, 2351 W. Third St., Los Angeles 57.

Walter W. Keusder, President, Home Builders Council of California, 300 Montgomery St., San Francisco 4.

Albert F. Knorp, Executive Secretary, Home Builders Council of California.

Kenneth G. McGilvray, Building Material Dealers Credit Association of Los Angeles.

Kenneth A. Ross, Jr., Associated General Contractors, Southern California Chapter, 3963 Wilshire Blvd., Los Angeles 5.

Senator Richard J. Dolwig, Chairman of the Subcommittee on Real Estate and Probate, presided at the hearing, which is fully reported as follows:

SENATOR DOLWIG: I think the first order of business that we have this morning is on mechanics' liens. As I remember, at the last meeting we had there were proponents and opponents relative to some legislation on mechanics' liens. At that time it was agreed that the various people interested in this problem would try to get together and submit some legislation to this subcommittee for its consideration and that the subcommittee would then make a report to the main committee. I think at this time we would like to hear from the various people who were to have gotten together with John Bohn to find out whether there has been any agreement on any recommended legislation to the subcommittee. Who is the spokesman for the various groups that would like to start this thing off? John Bohn suggests that perhaps the subcommittee ought to have a report on the meeting that you've had with the various groups.

MR. BOHN: Mr. Chairman, subsequent to the last meeting of the subcommittee, there was called in Sacramento a so-called industry meeting or industrywide meeting, at which time the whole subject of mechanics' liens was discussed. There were no Members of the Senate or of the Assembly there. This was a meeting of industry, but by invita-

tion I attended to listen in on behalf of the committee. The specific item before the industry meeting, as is true also in the case of the subcommittee before, was the so-called Notice Bill, copies of which members of the committee have before them. In substance, this bill provides, with some additional detail, that the supplier and others will have to give notice to the owner and to the contractor as a condition precedent, as I recall it, to a valid lien. At the industry meeting in Sacramento there were about 50 people present representing pretty much the building industry in California. There were representatives of subcontractors, of various types of credit associations and of the general contractors. The bulk of the testimony at that time was in favor of something similar to the Notice Bill which you have before you, however, there was very vigorous and very substantial opposition to the Notice Bill by several groups who are also represented here today. So the industry committee meeting, like the prior subcommittee meeting was adjourned with the idea in mind that there were going to be several meetings within the various segments of industry to see if it was possible to iron out whatever their differences were.

I have been receiving reports of one type or another as to what has happened but we haven't had anything official as to whether or not the people are together. So with your permission, Mr. Chairman, perhaps we could more or less start this thing out by calling the roll to see who is still in favor of the Notice Bill and those who have changed their mind. I gather some have changed their mind. Now, as far as the Associated General Contractors are concerned, they are represented here today by Kenneth Ross and Al Knorp. Would you gentlemen want to briefly state your position as to whether or not you still favor a bill substantially of the type now before the committee?

MR. ROSS: Yes, Mr. Chairman. My name is Kenneth Ross, representing the Associated General Contractors. I might say for the record that the Associated General Contractors, the four chapters in the State, met with the Construction Industry Legislative Council, representing principal subcontractor associations. I don't believe they are represented today inasmuch as they are having a conference in Bakersfield, but we met last Tuesday in joint conference and wish to sustain our position that we have taken at all previous meetings in favor of a Notice Bill.

We sponsored an Assembly Notice Bill at the last general session. The Home Builders Council, represented by Al Knorp, sponsored Senate Bill 806. We feel that the present notice recommendation is certainly a watered-down approach to it from our standpoint, but on the other hand we have agreed to it, we feel that it is a step in the right direction and our position at the moment is that we would favor the recommended proposal before you of a 10-day Notice Bill after notice of completion, or 35 days if no notice of completion is filed and we wish to stand on our previous testimony in that regard.

SENATOR COBEY: If it won't take too much time, would someone state very simply what the purpose of the Notice Bill is?

SENATOR DOLWIG: I think for the record we should note that Senator Coombs was the other member of the subcommittee and is present. In addition to that, we have Senator Grunsky, as the chairman of the interim committee. We also have Senator Beard, Senator Cobey

and Assemblyman Hanna here. And I think perhaps Mr. Bohn—at this time would you just go over the main portions of the bills so everybody here can understand what we're discussing?

MR. BOHN: By way of background, several years ago the then Senate Interim Judiciary Committee was invited to meet with the grand jury of the County of Los Angeles to discuss a scandal which had arisen in that county by virtue of a wholesale series of lien foreclosures. The grand jury had a series of recommendations for what they thought would be proper corrective legislation. It is my recollection that the interim committee thought that, while the objectives were desirable, there were a good many technical problems in those bills which hadn't been thought through by the grand jury. So ever since that time, there have been a series of bills presented to the Legislature, the basic problem being to somehow or other do two things: see that the money which is normally obtained from a bank loan goes for the construction project and there's not an opportunity for diversion of those funds from the construction of one house to another, and the second phase of the problem is that the owner somehow or other knows that his house is subject to lien and that in fact he could be required to pay the same bills twice.

There were two underlying approaches to that, one was a requirement—I should first of all go back and say there was a third problem raised by both the general contractors and the subcontractors to the effect that there are suppliers who have lien rights and who supply materials to these jobs who are unknown to the general contractor and in some instances unknown to the subcontractor, so that to a lesser extent the general contractor is in the same position as the owner, he could pay his subcontractor in full and still have the job liened and the general contractor who is solvent would have to make it good, if not, the owner would have to make it good. So I think all segments of industry agree that something should be done, the disagreement has been how it should be done.

Now there have been several approaches, one is the compulsory bond approach, requiring all contractors and others on these jobs to take out a bond. That has been under discussion for a good many years, and for many reasons different groups have testified in opposition to the compulsory bond primarily on the grounds of increase of cost of construction and limiting these contracts to a few contractors who are able to get the bond. The other approach has been this so-called notice approach, which is the bill we have before us, and this bill, as I understand it, was sponsored originally, at least it was advocated originally by some large segments of the material dealers themselves, and perhaps Ken, since you are one of the principal draftsmen of this bill, could you give the committee just briefly your idea of just what this bill would do and how it would do it?

MR. MCGILVRAY: I'm Kenneth McGilvray, attorney at Sacramento and registered representative of the Building Material Dealers Credit Association of Los Angeles, which has approximately 2,700 members, 1,900 members in the Southern California district and probably represent more material supply houses than any other one single industry does here in the credit field.

The bill that was presented to the subcommittee some months ago and then discussed by the industrywide meeting held in Sacramento May 12, at which Mr. Bohn was present at our invitation, and at which we discussed this bill was prepared by us for the Building Material Dealers Credit Association, and the reason for it was that we felt that industry should do a part and try to get together. It was a compromise measure that if notice went out 20 days in our bill after the notice of completion was filed that it wouldn't put too much of a burden on because material houses want to get paid, of course, as quickly as they can. They watch the notices of completion and it would give the general contractor and the subcontractor and the owner the 10-day period within which to get his bills paid, and if they hadn't filed a letter or a notice within 20 days after the notice is filed then that 10-day grace period—well, the contractor will say, "Fine, I've had no notice, there can't be any lien," in effect substantially cuts down the period of which liens can be filed from 30 days to the ordinary subcontracting fields to 20 days, it was a compromise measure.

Now, some of the industry that is represented by Mr. Dean's group, though it was authorized at the time, have changed their mind. I think I mentioned that to you, Mr. Bohn, on the telephone the other day and I don't know whether, though we proposed it, I'm not too sure that we are at the present time in favor of our proposal, it was definitely a watered-down type of notice bill. Senate Bill 806, Senator Regan's bill in the 1957 Session, was seriously opposed by industry because that bill would have required within 10 days or 15 days after you furnished the material to the job that you give a notice that you might claim a lien. It didn't cut down any of your lien periods except that you would have to send a notice out if you ever wanted to file this lien. For instance, just a plumbing firm, take Crane Company, who furnish plumbing materials, they're purely a material supply house, they're never in the contracting field, furnishes some material to a job of \$2,000 worth, if they didn't send a notice within 10 days, under Senator Regan's Bill 806, they would have lost their lien rights. The reverse of that case under the proposal that we made to the committee of the watered-down notice bill would be that they wouldn't have to send any notice out until after a notice of completion on the job had been filed and they wouldn't have to send the notice out then until 20 days had gone by, and if they sent the notice out they still wouldn't have to file a lien if they had sent this letter of intention until their actual lien rights would have expired.

SENATOR DOLWIG: Pardon me, Ken, would you just go over that last part again?

MR. MCGILVRAY: The Crane Company wouldn't have to do anything under this proposal until the notice of completion is filed, then within 20 days they would have to make up their mind if they wanted to notify the main contractor or the general contractor and the owner whether or not they were going to file a lien, so within 20 days—

SENATOR DOLWIG: Well, now pardon me, I think I'd like to get this straightened out. We have two things we're talking about. We're talking about a notice of a lien and we're also talking about a notice of material furnished.

MR. MCGILVRAY: Yes, that's what I'm saying. I'll do it again. Crane Company has furnished \$2,000 worth of material to a job. They won't have to do anything as far as a notice is concerned, except perhaps do some billing and try to collect their money as an ordinary business procedure, but as far as lien rights are concerned, under this proposed bill, they wouldn't do anything until a notice of completion is filed on the job, in other words, by the owner or his agent, that the job is done.

Today Crane Company has 30 days to file a lien if they want to protect their lien rights. Under the proposed bill they would have to, within 20 days, send a letter of intent that they have furnished material and that they might file a lien. So, in effect, within 20 days, they've got to decide what they're going to do, and if they don't send that letter their lien rights have gone by the board. If they send the letter they still have an additional 10 days to file their lien. Now the purpose or theory in back of it in our group was that it would put that little responsibility on the supply house to give a notice to the general and he has a period of 10 days when he's getting his finances together, and if he didn't get that letter of intent from the supply house he'd say, "O.K., I'm all right to go." In other words, it gives him a period of 10 days within the financing and proposing of the job to know where he stands and he wouldn't probably pay out, he would have some withholds, he wouldn't pay his subs until he knew what was happening. It takes approximately, I would say in the average job, at least men who represent A.G.C. but certainly on a large job or even a small job, when you finish it there's at least a 30- to 40-day period that goes in, and that was the thought of it. But as I say, some of our people are still in favor of it, some of our groups are not in favor of it. Mr. Dean could discuss that a little later on but now, do the Senators have any questions on what this bill would do?

SENATOR DOLWIG: Yes, insofar as this bill is concerned, will you point out in the bill where a materialman would lose his lien rights in the event that he did not give the notice within 20 days?

MR. MCGILVRAY: I might say that on this bill that Mr. Ross and I in all good faith and intention told the committee that we'd try to get together and we have, but we still haven't formulated our thinking on some minor amendments but that can always be done. We aren't out of line on it as far as the substance of the bill is concerned.

SENATOR COOMBS: Just a minute, Mr. Chairman, that's one of the great troubles with all our laws. At the last minute you fellows run in with amendments, the bill goes out on the floor and his grandfather wouldn't recognize it after the amendments are in and nobody knows anything about it.

MR. MCGILVRAY: Well, these amendments Senator—

SENATOR COOMBS: In other words, why can't you present prior and before the session everything you intend to go into your bill?

MR. MCGILVRAY: They would be, Senator, and they would be in the hands of your counsel and all Senators prior to January 4. They will definitely, if we get together on the bill or even if we don't get together on the bill, what we have in mind on these technical amendments would be in the bill and the Senators would have them.

SENATOR DOLWIG: All right.

MR. MCGILVRAY: Referring to this bill on page 1, in Section 1193-A and I think if you'll just count up from the bottom of the page about seven lines starting with the words "The notice may be sent," so the notice may be sent in no event later than 10 days after the filing of the notice of completion.

SENATOR DOLWIG: I see. Well, Senator Beard points out—I think the answer to my question is up farther Ken, and that is "For which a lien otherwise can be claimed under this chapter must as a necessary prerequisite to the validity of any claim subsequently filed cause to be given written notice as prescribed by this section." Is that the language which would make the loss of the lien rights apply here in the event that the 20-day notice was not given?

MR. MCGILVRAY: That is correct.

SENATOR DOLWIG: Does everybody agree on that?

MR. MCGILVRAY: Of course, they've got it in here 10 days. We submitted it 20, but whether it's 10 or 20 we proposed 20, and Mr. Ross's group proposed 10. It says 10 here now but——

SENATOR DOLWIG: Well, we're not talking about the time element now. What I'm concerned about is, does the bill actually provide that lien rights are lost in the event that the notice is not given within the 10 or 20 days?

MR. MCGILVRAY: That is correct. Yes, sir.

SENATOR DOLWIG: Everybody is agreed on that? All right. Any other questions?

SENATOR BEARD: Mr. Chairman, the language of it to me could be construed to waive all rights, lien and contract rights too, when you use the word "claim" rather than "lien." I don't know, but if on a cursory reading of it—I think——

SENATOR DOLWIG: The suggestion, Mr. McGilvray, is that otherwise can be, your talking about now about for which a lien otherwise can be claimed. You're now indicating that the language should be a claim of lien?

SENATOR BEARD: After the words "Prerequisite to the validity of any claim of lien" if the words "of lien" can be inserted after "claim" then there would be no question that all of the contract rights would not be waived.

SENATOR DOLWIG: I think you would have to make some other changes then. If you read the sentence "except one under contract which the owner or one performing actual labor for wages, every person that furnishes labor, services or material for which a" shouldn't you have "for which a claim of lien"? Otherwise "can be claimed"—all right where does "of lien" come up?

SENATOR BEARD: Later on.

SENATOR DOLWIG: Oh, "of any claim of lien subsequently filed." Is that understood now? All right.

MR. ROSS: Ken Gilvray had it in his original draft, I know. It was apparently inadvertently left out.

SENATOR DOLWIG: All right, are there any other questions by members of the committee? Do you wish to present anything further, Ken?

MR. MCGILVRAY: I'd like to have Mr. Dean speak on the position of who has come out in opposition to it in the building material

dealers' group, and then also I think that Mr. Dean would like to present some cost factors of the notice of items themselves. They have made a test run of what the cost would be and if the Senators would hear those figures I think it has some bearing on the overall picture, mainly that it is costly.

MR. DEAN: James Dean, secretary-manager of the Building Material Dealers' Credit Association of Los Angeles. At the time we submitted this I was quite certain that probably most of the building material dealers in the State of California would be in favor of it. Shortly thereafter it developed in the northern part of the State, particularly in San Jose, that they opposed it very strongly and said so, as I remember, in Sacramento on May 12. They have not changed their mind in any way, shape, form or manner and neither have some of the other districts, primarily because of costs involved.

At the time we made the proposal I didn't have the cost sheets I have today. I have taken Los Angeles County alone and Orange County and if we took the notice form of bill that we have there and had to send out a notice of completion in Los Angeles County, city and county, on registered mail, it would cost \$2,637,000 a year for completions only. On certified mail it would cost \$1,834,000 a year. In Orange County the cost would run on registered mail \$645,744 a year, and certified mail \$449,364. Now if we took it on a permit basis of Los Angeles County only, like the original bill which was submitted by Senator Regan and I've broken that down and that would cost on registered mail \$4,413,000 a year in Los Angeles County, certified mail \$2,963,000 a year.

SENATOR DOLWIG: Pardon me, Mr. Dean, I want to get those people who weren't at the meetings—that bill provided, as I remember it, that wherever any material was sold on the job that an invoice would have to be presented within a certain time of the material furnished to the owner and to the general contractor.

MR. DEAN: A notice of some type—both to the owner and the general contractor. There would be two in each case.

SENATOR DOLWIG: Yes, and these estimates are made on that basis. All right then, sorry to interrupt you.

MR. DEAN: That's OK. So after these figures come out, again your building into cost and construction and it seems though, our people feel now that there must be a way that we can reach this thing on an easier or less expensive basis.

SENATOR COBEY: Mr. Dean, how much does this cost amount to for a single supplier on his particular business percentage-wise? That's what I'm getting at, on a particular job?

MR. DEAN: I haven't that figure here, I can probably get it. I have the permits here and the values of them.

SENATOR COBEY: I mean frankly that total figure doesn't mean anything to me.

MR. DEAN: Well, it would increase your cost of construction that much.

SENATOR COBEY: Yes, I agree with you on that, but I mean as far as I'm concerned it seems to me that you're trying to evaluate its economic impact. The best way to evaluate it would be the increased cost on a particular job.

MR. DEAN: Well, the other day I went to 12 of the outstanding general contractors in Los Angeles and asked them to advise me what they estimated the number of subcontractors there were on a job. They came up with anywhere from 20 to 30 subcontractors.

MR. KEUSDER: As to the type of contract that you're probably talking about that's true; that would be big contracts.

MR. DEAN: I took it right in the middle and took 25.

SENATOR BEARD: Mr. Dean, as a practical matter, you're not going to send either a registered or a certified letter to every contractor and owner. You're just saying that if you had to send to everyone, but wouldn't it be closer to the 10 percent figure of all jobs that——

MR. DEAN: Well, I'd like to put it at about 15 or 20 percent in Southern California that you would probably have to notify them, somewhere in that neighborhood.

SENATOR BEARD: And you can do it by other than registered or certified mail?

MR. DEAN: Special delivery or something else. Certified mail costs 34 cents and registered mail is 64 cents.

ASSEMBLYMAN HANNA: I wonder at this point if it would be also fair of Mr. Dean to indicate that if the notice requirement was tied into a situation where there was an expectation to lien that if the notice was tied there you might be interested in these figures. That insofar as we've referred to Los Angeles and Orange Counties, the mechanics' liens that were filed in Orange County in 1956 were 1,296, and in 1957 1,056, and in Los Angeles County in 1956, 5,900, and in 1957, 5,200, as an estimate from the county recorder in both counties. So that you might have in mind that if the approach were made on that basis that you're talking about a substantially lower number of notices, is this fair, Jim?

MR. DEAN: Well, I think you're low, Mr. Hanna, as far as that goes, but I have the figures in the office, which I didn't bring with me, which are materially higher than these figures.

ASSEMBLYMAN HANNA: That might very well be, but I think possibly in addition to the figures that we have, we might have for the committee then, as accurately as we can, the estimated figures of liens per year so that if the consideration were given for notice as a sort of intention to lien that it would be related to those figures rather than the notices of completion or notices of permit.

MR. DEAN: Mr. Hanna, as Senator Dolwig's bill is set up, it would have to go out on every job regardless of——

ASSEMBLYMAN HANNA: That is correct. I was bringing up this other to suggest that there might be a third approach on the basis of notice prior to lien as a sort of intention to lien.

SENATOR DOLWIG: Well, that's what this proposed bill provides.

SENATOR COBEY: What you're arguing about is, you say, Mr. Dean, that, as a matter of business practice, if this bill became law, to be on the safe side, notice would be sent out right down the line.

MR. DEAN: It would be almost automatic.

SENATOR COBEY: What Mr. Hanna is saying is that, as a matter of business practice, you would normally send out this notice only where you thought that you might have to lien.

ASSEMBLYMAN HANNA: It might be somewhere between those two that you would actually have a figure, but I think you should have both of those in mind.

SENATOR COBEY: If my arithmetic is correct on Los Angeles County, if it's 34 cents for certified mail, then that reduces the cost to the neighborhood of \$2,000, adopting Mr. Hanna's suggestion.

SENATOR DOLWIG: Gentlemen, I would like to explore with Assemblyman Hanna, as indicated here now. Under the provisions of the proposed bill the amount of notices, according to the figures Mr. Hanna gave, would be around \$5,500 in Los Angeles and about \$1,300 in Orange County, so that your cost would drop down materially.

SENATOR BEARD: Mr. Chairman, if I may pursue that. Of course, the mechanics' liens that were filed and in the figures taken from the county clerk there was a 30-day period in which to file them, here there's only a 10-day period, so there's an additional 20 days that the bills might have been paid in those last 20 days, but if you don't file your notice here within 10 days after notice of completion, you're out, so it would increase these figures substantially.

MR. MCGILVRAY: That's why we had originally put it in 20 days instead as it appears here 10 days.

SENATOR DOLWIG: Certainly, 20 days would be better.

MR. MCGILVRAY: We feel it would be, yes, but A. G. C. wanted 10 and that's where it is. Maybe it would be a compromise somewhere in between, but I think that we would still want 20 days to accomplish this whole purpose. And, of course, as I have said before, what we're trying to do is avoid double payment. No one should have to pay twice, and it's the small homeowner who gets the bad contractor who gets the licking, like the guys who have built the swimming pool. That's one of the hazards of the industry, these swimming pool generals have built a lot of swimming pools and they all seem to, I don't mean all, but a great many of them go under and these guys don't take a bond and they end up paying three or four thousand dollars twice. Industry doesn't want that; it isn't good. That's what the original grand jury investigation was, and even this notice bill won't stop the double payment. It could happen all right. A guy could trust his swimming pool contractor or his other contractor, and then we still come back to our other old theories of a mandatory bond or a bond running to the State on the part of all generals to help out or the mandatory escrow bill, but as you all know, the problems that we have on those approaches.

SENATOR COBEY: Mr. Chairman, Mr. Ross, it was the A. G. C. that put the 10 days into the bill. I'd just like to hear why.

MR. ROSS: Senator, I am Ken Ross of A. G. C. We are trying to avoid double payments. Obviously, that's our entire concern, and this doesn't avoid it. In many cases our contractors represent generally the large contractor, and our contracts, as a result, run into a considerable size, and subs will come onto a job and complete the work and be off the job long before the completion of many of them, so they're paid off in full. This will not in any way avoid the possibility of double payment in that case, but we were trying to give ourselves sufficient time to learn of a potential claimant out here and to attempt to see that he gets paid before we pay our sub off in full and we didn't feel that 10 days gave us sufficient time.

Our problem, of course, is with third party claims, maybe a sub to a sub-sub, a materialman and we have no way of finding out who he is, we may not even know that this sub-sub is in trouble. On the other hand, it may be a materialman to one of our own subs and we can perhaps recognize the fact that he is getting into trouble but when we recognize it we have no way of determining with whom he has done business and so we want to get some indication from these third party claimants that there is a claim outstanding and give us time to go to them and try to see that they get paid before we pay off the sub-contractor in full. We didn't think 10 days gave us sufficient time. We're not, again, trying to take an unfair position on it, all we want to do is work a period here that is fair to the materialman but also gives us time to get this — (Noise.)

SENATOR DOLWIG: Well, on the other hand, calling that too, the thing that seems to concern me is the short time that you're leaving the possible lien claimant in order to file this lien, and if he doesn't file it he has that cutoff date which is 10 days, which may be a hardship.

MR. ROSS: Some of our people, of course, are not enthusiastic about this also because they realize it creates problems; but, on the other hand, we feel that it solves more problems than it creates by a long way, and for that reason our people have felt that a 10-day period was a more reasonable period of time. Now, this matter of bond has been brought up, for example, and we do have this problem in bonded work, a bond solves nothing as far as the general contractor is concerned, because as long as the general is solvent the bonding company comes back on him anyway, so we need a notice even if there is a bond on the job, and we intend, if we can work out the mechanics of filing notice, to also try to sponsor legislation which will require notice to the general even on all public work where it's bonded, because there we have six months and these third-party claimants will lay out in the weeds for five months and 29 days before we hear of them and the bonding company will pay them off and come back on the general so we're caught in the same position there.

SENATOR GRUNSKY: Mr. Dean, did you express the opposition that they felt it was surcharge or just increasing the costs of the job?

MR. DEAN: Increasing the cost of the job and increasing the cost of material to the job.

SENATOR GRUNSKY: Right. Is there any other basic objection?

MR. DEAN: As far as we're concerned in the South, no, but Mr. Booker is here from the North and he will express their objection.

SENATOR GRUNSKY: Well then, addressing myself just to your objection, let me understand this. Let's take a hypothetical case of a swimming pool, although that's a substantial item, but for illustration. In order that that person furnishing labor or material or both, as the case may be, as one individual, to protect himself against default and to protect his liens, am I not correct, he only has to mail two notices on that particular swimming pool, one to the owner and one to the general contractor, so maybe he has 10 or 15 thousand dollars tied up in it and it seems to me that to pay 54 cents or whatever it is, 64 cents twice is pretty good protection on \$15,000.

Now, on the other hand, say, "Well then, that just adds on to the cost of the job," so when he bids for the job he adds to the contract

price he quotes to the owner \$1.24. I'll say that's a lot cheaper than bond premiums and if it accomplishes the same thing if I was the owner, I think it would be very fine to pay even a \$1.50 to be sure I didn't pay twice on a \$15,000 swimming pool. So again, I wonder if, in that it only arises you say some 10 to 15 percent or maybe 20 percent of the cases where you'd mail anything as a practical matter, really what you are talking about when you can get that kind of protection on your indebtedness for that kind of a small premium?

MR. DEAN: Well, Senator, you're figuring just the actual mailing cost there. Now you've got manpower cost and things to make up and so on and so forth which will run you not too much more, don't get me wrong, but I mean your certified mail is not your only expense. You have to pick up your description of your property and so on and so forth.

SENATOR GRUNSKY: No, but all I'm getting at is unless we hear something from the others I would say that if your basic objection is expense, people are always paying premiums on bonds or on fire insurance or whatever it may be to protect themselves and it seems to me that's awfully cheap insurance. If this is workable and all you're talking about is mailing cost, manpower and processing and filing claims, particularly when, if it's enacted, everyone will have mimeographed or printed forms and there will be no strain or pain; the office girl will be doing it.

MR. MCGILVRAY: Mr. Chairman, I have sent to your counsel, Mr. Bohn, maybe the members had it, a memorandum from the Legislative Counsel Bureau on the question "Can we divorce suppliers from laborers?" and there is a grave question, as I remember the opinion of the Legislative Counsel that we may not be able because of the constitutional requirement, to divorce labor from the requirement of sending notice and if we do that I don't know if there is anyone here representing labor, but the bill is proposed that you leave labor out, but they don't have to send these notices but there are some cases and the opinion pointed it out that there is a grave constitutional question whether or not you can make one rule for labor and one rule for mechanics' liens.

ASSEMBLYMAN HANNA: You're referring to the wording of Section 15 of Article 20 in the Constitution?

SACRAMENTO, CALIFORNIA
May 1, 1958

HON. THOMAS J. MACBRIDE
519 Forum Building
Sacramento 14, California

MECHANICS' LIENS—No. 2962

DEAR MR. MACBRIDE: In accordance with your previous request (No. 1121) we drafted a bill which, generally, requires that a person who furnishes labor, services, or materials for which a mechanics' lien can be claimed give written notice to the owner and to the general contractor, if the labor, services, or materials were not furnished to the general contractor, as a prerequisite to claiming the lien. The notice would describe the labor, services, or materials furnished, the name and address of the person furnishing same, and the contract price or reasonable value. It

would have to be filed after the furnishing of the labor, services or materials and not later than 20 days after filing of the notice of completion.

You have asked for our opinion on the constitutionality of exempting labor claimants from such legislation.

OPINION

Although we could not say categorically that this would be held unconstitutional we conclude that in the present state of the law there are serious doubts as to the constitutionality of such an exemption.

ANALYSIS

Section 15 of Article XX of the California Constitution provides as follows:

"Mechanics, materialmen, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."

The precise question you present does not appear to have been decided by the courts. However, in *Miltimore v. Nofziger Bros. Lumber Co.*, 150 Cal. 790 (1907), the California Supreme Court, by 4 to 3 vote, held unconstitutional a statute giving liens of laborers priority over liens of materialmen. The court stated (at pp. 792-3):

"The effect of the constitutional provision, [Art. XX, Sec. 15], is to place mechanics, materialmen, artisans, and laborers in the same class. They are each to have a lien, the mechanic, laborer, and artisan, for the value of his personal work or services bestowed, and the materialman for the value of materials furnished by him, and no preference is given to the one over the other. Their equality is thus established by the Constitution, and it cannot be impaired or destroyed by the Legislature. The Constitution is self-executing to the extent that it confers upon these classes of persons a lien, and makes them equal in point of rank with regard to each other. The provision of the code that persons performing manual labor shall be first paid out of the proceeds of the property, and, in effect, that the materialman shall have no lien, except upon such balance of the proceeds as may remain after the laborers are fully paid, clearly impairs, and in many cases will destroy, the right of materialmen given by the Constitution...."

Similarly in *Stimson Mill Co. v. Nolan*, 5 Cal. App. 754, involving the giving of a preference to a materialman lien claimant over other lien claimants, the district court of appeal, citing the *Miltimore* case, stated:

"The constitutional provision which gives to mechanics, materialmen, artisans and laborers of every class, a lien upon the property upon which they have bestowed labor or furnished materials, places such parties in the same class. Their equality is established by the Constitution and cannot be impaired or destroyed by the Legislature."

No doubt the closely decided *Miltimore* case and also the *Stimson Mill* case are readily distinguishable from the proposed legislation to which your question relates. Once they have properly claimed their liens, under the proposed legislation, materialmen would have no lower priority than those furnishing labor. There is merely an additional step that materialmen, but not those furnishing labor, must take to claim the lien. However, it is possible to read the *Miltimore* case as requiring that neither group should be subject to any hindrance to which the other is not also subject, in getting at the security. The notice requirement could be viewed as an additional barrier, which if it is not placed alike before all persons covered by the constitutional provision, violates a constitutional requirement of equality.

However, assuming that the exemption would not be held violative of Section 15 of Article XX, it is still necessary to consider whether there would be a violation of the guarantee of equal protection and the prohibitions against special legislation in the California Constitution (Art. IV, Sec. 25; Art. I, Sec. 11). It is basic that a classification is reasonable within the requirements of these provisions only if there are differences between the classes and the differences are reasonably related to the purposes of the statute (*Werner v. Southern Cal. Associated Newspapers*, 35 Cal. 2d 121). Although the proposed legislation does not state the purpose to be accomplished, it can be inferred that an aim of the notice requirement is to apprise owners and general contractors of the fact of the furnishing of materials and of labor, if labor is included, so that the owner and general contractor can take steps to avert the consequences of nonpayment of those furnishing the materials and labor. We are in no position to say that there is no difference between laborers and materialmen

reasonably related to such object of legislation. If the courts should conclude that there is such difference, they could then sustain the legislation against the contention that it violates the guarantee of equal protection or the prohibition against special legislation.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By
TERRY L. BAUM
Deputy

MR. MCGILVRAY: Yes, sir, not that I wouldn't like to see them exempted and all that, we do have that basic problem.

SENATOR GRUNSKY: Well, the way the bill is now drawn you have them both in there.

MR. MCGILVRAY: Well, I think it was intended that labor wouldn't have to give the notice. As far as that's concerned, organized labor, I think, and your Department of Labor Enforcement in the State would oppose this bill unless they were exempt and if we exempt them then we have the constitutional question. It isn't proposed that the mechanic has to do it. Now someone says that labor always gets paid, they don't have to file liens, but that's not the history.

ASSEMBLYMAN HANNA: That's not true that labor always gets paid, I know that as a matter of fact and I have some material here on that if the committee wanted to hear it, as far as the labor problem is concerned.

SENATOR DOLWIG: May I point out to you, we've gone into this problem before and I think it has been generally agreed that the inclusion or exclusion of labor here is an open question, and constitutionality of it has not been determined by the courts and I think that Mr. McGilvray pointed out may be the situation but I think as far as the committee is concerned we're going to have to handle this as an open question. If we leave labor in someone may attack it from the constitutionality standpoint.

SENATOR GRUNSKY: Mr. Chairman, before you get into any constitutional question on that though maybe for the purpose of continuity of thought, if there is some other opposition other than that of expense stated by Mr. Dean, let's hear about it so we'll get this all in one bundle.

SENATOR DOLWIG: Let's hear from Mr. Booker and then, Assemblyman Hanna, we'll come back to you for that information.

MR. BOOKER: My name is Eugene Booker from San Francisco, and I represent 8 or 10 groups who have organized into a committee, and we've had a series of meetings in San Jose. I myself am executive secretary of the Rock, Sand and Gravel Producers Association of Northern California, among which members are the Pacific Coast Aggregates, Henry J. Kaiser, Flag Brothers, Basalt Rock and that type of person, and I also am secretary-manager of the Northern California Ready Mix Concrete and Materials Association, and also I manage what is known as the Building Materials Dealers' Club in San Mateo and Santa Clara County.

Now, we, of course, prefer not to take a negative position. We would sooner actually come out and propose legislation which we think would remedy the situation rather than talk continually against this proposed legislation. We believe that the original premise calling for legislation

arose on account of the situation in Los Angeles wherein the grand jury actually asked that something be done to protect the public. Now, if anything can be done to protect the public we think that that should be the primary responsibility, and if anything incidentally comes out to protect the prime contractor, the subcontractor, that's good, because those people are our customers. We, of course, believe that. Do you mind me taking it from the positive rather than from the negative point of view?

SENATOR DOLWIG: Certainly.

MR. BOOKER: We believe that the public, a person who is going to have anything done by a contractor, large or small, should know that there is such a thing as a lien law, and we have filed with Senator Grunsky, I believe. We have a committee of which one member is Austin Zelmer, who represents the Credit Managers Association in San Jose and who is also credit manager for Granite Rock Company and Central Supply Company at Watsonville, Salinas, Monterey and Santa Cruz. He proposes, of course, that the agency issuing the license or the permit rather to be required to send notice in writing or possibly printed on the back of a permit, the time the permit is issued and the said notice to contain the various items that John Q. Public, the consumer, should know about.

We think the public, in many cases, gets into trouble because they don't realize that there is such a thing as a lien law and nobody tells them until they get into trouble. We believe that, this is Mr. Zelmer's further proposal, all materials used and services performed in the work of improvement become a lien. He should be told that, that the owner of the property that has been improved may require the general contractor or subcontractor to furnish a bond, the owner may demand that under the present lien law, that's under Section 1185.1, that the owner of the property that has been improved may require a waiver of lien of rights from the general contractor, subcontractor and materialman and laborers for services performed and on materials supplied at the time payment is made for such services and materials. That the owner of the property being improved may demand and the general contractor shall be required to furnish a list of names and addresses of all the subcontractors and all materialmen furnishing services and/or materials in the work of improvement where such services or materials to be furnished by any one subcontractor or materialman will in the aggregate amount to more than \$200. In that regard, we of course, believe that the initial contractor knows who his subs are and he should inform his subs as to their obligations under this proposed bill. If there's a sub-sub they in turn will be informed by that subcontractor. Fifth, Mr. Zelmer suggests that the owner be advised to seek competent legal or professional advice to protect his interest. Now those are carried out in some detail but we would propose, of course, that, after discussing the thing, that maybe the bill should be so broad that actually the material which is furnished the builder or the owner to be left to the discretion, what is in that list, should be left to the discretion of the people in charge of issuing the permit.

SENATOR DOLWIG: Pardon me, Mr. Booker. What do you mean, that the procedure to be followed should be left within the discretion of the agency issuing the permit?

MR. BOOKER: It may be that this list, it wouldn't be perfect at all, in other words, there would be a call for some revision, we might have to leave it in the hands of some department that would actually make a digest of the lien laws and other applicable laws and come up with a list other than this. In other words, this is not a fixed list insofar as we are concerned. The main point is that the owner should be advised of his liabilities when he has any work done and the dangers he is getting into.

We had another proposal. Contractors of all classifications, so that at the time of applying for a license and upon each renewal thereof, supply a bond to the State of California running for the period of the license, providing for work started under the contractor's license in an amount depending upon the contractor's classification, not less than \$2,000, not more than \$10,000, priority of the demands upon the bonds shall first be on the owner, who has been obligated to pay an amount or this amount rather, arising on account of a lien and second, to a contractor who has been obligated to pay any additional money arising from a lien. Last, a committee turned over to me—we are considering this proposed bill, every applicant for a license under the provision of this chapter is to file with the registrar as a prerequisite to the issuance of a license to such applicant, a bond issued by a surety authorized to issue bonds, a surety under the laws of the State of California, the sum of \$10,000 running to the State of California. Bonds so given shall provide that in the event of default in any of the provisions of the contractor's licensing act the principal sum of said bond shall be made available to claimants against the contractor in the following order:

(a) To the owner of the property who has paid lien claims filed against his property over and above his contractual obligation with the contractor.

(b) To any contractor who has paid an amount in excess of his contractual obligation by reason of a lien filed against the owner's property.

We are working on another bill, but we do not have that completed.

SENATOR BEARD: Mr. Booker, we have your three alternative approaches to this problem, but I don't know whether it wouldn't be better to get the negative approach and see why you are against this particular bill before we consider the various alternatives.

SENATOR DOLWIG: Yes, Mr. Booker. Would you mind? Senator Grunsky asked a question of Mr. Dean, and would you undertake to answer the same question of Senator Grunsky and of Senator Beard?

MR. BOOKER: Yes. Notice of completion is difficult to match with a building permit. The descriptions in the notice of completion often differ as to descriptive wording, and verification must be made on sight or with the contractor, owner or title company. The information that the notice of completion that has been filed is not readily available to material suppliers within 7 days or 10 days. It would be necessary for material suppliers to set up special procedures to scan the recorder's blotter at the recorder's office.

SENATOR DOLWIG: Pardon me, Mr. Booker. On that one point, doesn't the industry receive a notice every day of liens, of notices of completion? Don't you have that?

MR. BOOKER: Some of them have it and some of them don't. You have large ones and you have small ones.

SENATOR DOLWIG: Wouldn't it be possible for all your materialmen to —, the cost is not great, is it, to get this service?

MR. BOOKER: I think that was presented up in Sacramento at that hearing, I think the figures were given by a man from the Building Exchange in San Mateo County. I think he figured that about \$12.50 a year or something like that for each of the materialmen and subcontractors, they'd all have to subscribe to that service and a lot of them don't subscribe to it now.

SENATOR DOLWIG: But they could subscribe to it for twelve and a half?

MR. BOOKER: That, of course, brings in the additional money again, that's money over and above what we've been talking about.

SENATOR DOLWIG: I'm sorry to interrupt you, I just wanted to get that clear.

MR. BOOKER: There is no provision in the bill, of course, this proposed bill, for days when the recorder's office is closed, Saturdays and Sundays, and the three-day weekends. Of course, if you have a key employee watching those things, which in most cases you'd have to have. An outfit such as Central Supply would have somebody watching, they would have to hire somebody to watch that thing constantly. Central Supply of Watsonville, for example, it costs them a thousand dollars a month, that's the estimate Mr. Zelmer gave to me, he should know, because he's about as good a credit manager as you'll find anywhere, it costs them a thousand dollars a month just to keep track of that one —.

SENATOR DOLWIG: What's their total gross business in a year, Mr. Booker?

MR. BOOKER: I wouldn't know. The point is there that a few days' illness on the part of some key employee could cost your firm its lien rights while that person was out. Now, for the small merchant, the small dealer wouldn't be able to afford, he wouldn't put anybody on to watch that thing — he couldn't. You have your material dealer with five or six employees and his office force is decidedly limited, so he, of course, would not be able to afford additional help.

SENATOR DOLWIG: Pardon me, Mr. Booker. Senator Beard has a question.

SENATOR BEARD: As a practical matter, Mr. Booker, is there any county in this State where any building is going on where there is not some type of notice service such as the Green Sheet or whatever you might call it?

MR. BOOKER: Probably that's correct.

SENATOR BEARD: And we're talking then only of a dollar or a dollar and a half a month increase in the cost. You don't have to put a new man on to scan a Green Sheet in the morning, do you?

MR. BOOKER: Well, you'd have to. I wouldn't say a small outfit would put a man on full time, but you'd have to have somebody doing it. So many times the owner and the bookkeeper will handle the works.

SENATOR BEARD: Well, at the present time if you're going to protect yourself with your mechanics' lien, you'd have somebody come in your small firms and go over the Green Sheets —.

MR. BOOKER: That's correct.

SENATOR BEARD: So actually there's no increase in cost there.

MR. BOOKER: Well, of course, in that particular case I would say a small firm would have somebody who would keep them advised, some legal firm possibly, or their attorney would keep them advised as to the notice of completion and what they have to file for lien. Of course, there's one further item that we object to and that is that, and this is true of all notices, when you notify the owner that you have not been paid by a certain contractor or subcontractor, you immediately raise in the mind of the owner the question as to the type of individual they're doing business with. It might lead to a situation where you would create a tremendous amount of ill feeling where the thing is not actually justified. You would undoubtedly file a notice, under this thing, you would file a notice to everybody who has not paid their bills at the time the notice of completion is filed. You wouldn't be able to select one or the other.

SENATOR DOLWIG: Pardon me, Mr. Booker. When you say "you," who are you referring to? The general contractor?

MR. BOOKER: I'm talking about the materialman.

SENATOR DOLWIG: About the materialman? All right.

MR. BOOKER: Of course, you have the further possibility that payments may be delayed. Payments may be delayed by cautious owners who refuse to honor or pay further draws, as agreed, who refuse further progress payment till the job is completed, at least if presented by the contractor to the owner. Now these are various items that we discussed at our meeting back in April, April 24, and I've gone over with you the digest of what it turned out by our chairman, Tom Samuels of the Credit Managers Association, at the Credit Bureau, rather, in San Jose. I'd like to, this letter that I have here authorizing me to come in indicates that I represent the Associated Plumbing Contractors of San Rafael; California Lumber Merchants Association, San Francisco; California Material Dealers Association, Oakland; California Material Dealers Association, San Francisco, the associations which I've mentioned of which I am an officer; the Credit Managers Association, San Jose; the Credit Managers Association, San Francisco; Northern California Ready Mix, the Peninsula Builders Exchange, San Carlos; Santa Clara County Concrete Dealers Association, San Jose; Sub. and Material Contractors' Association, San Rafael. We had various other people at our meetings, but according to Mr. Samuels, these are the people that I am supposedly speaking for.

SENATOR COBEY: Mr. Booker, personally I'm not impressed by either one of your alternatives. It's a matter of having the agency, as I understood you, send out a summary of a lien law procedure with the building permit or something of that sort when the building permit is obtained. Number 1, it would be meaningless to a great many owners. Number 2, any time that you have a public employee doing something, it may or may not be done. If it got to be a routine matter, why it certainly might very well be done, but as you suggested, that the contents of a notice, as I understood it, perhaps even the procedure would be discretionary. I wouldn't like to entrust it to a public employee to do, because as against that under this proposed bill there the person who is going to give the notice has a very definite economic reason for giving

it; it waives his lien rights if he doesn't give it. And so, therefore, I feel it would be done. You're not trusting on somebody doing a job that he's supposed to do, but you're trusting on the fact that he'll do it because it's his economic interest to do it.

Now secondly, with respect to your bonds, it seems to me that you're caught in a dilemma. If you make your bonds big enough to really do the job then you've really tied up the credit potential of the person who is getting the bond and his working capital and you've put him in a very, in my point of view, a very bad business situation. Now if you make the bond a small type of bond that you were talking about, we have unfortunately had bad experience with that in the agricultural field in connection with commodity middlemen. They also, as a matter of law must take out a small bond, but we find when they go sour that that bond doesn't cover a fraction of the obligations that they've incurred, so apparently I'm just speaking for myself, but I'm not impressed with either one of your alternatives and I'm not sure that I understand fully the objections that you've made to the bill, or the proposed bill, this notice procedure, but as I say, that's purely my personal opinion.

MR. BOOKER: Well, Senator, in connection with the notices, possibly you would agree with me or with us that the public should know that there is such a thing as a lien law.

SENATOR COBEY: I have no objection to that, but we send out, for example, election law pamphlets to precinct boards and I'm quite familiar with that. In fact, that used to be my responsibility in Los Angeles County, and I was amazed at how little of that actually sank into the boards, and when I asked to conduct a recount. I think you have the same problem with respect to sending out a summary of the lien law to the average layman. I think it means very little to them.

SENATOR DOLWIG: Well, you'd almost have to send out the provisions in the code, otherwise somebody is going to have to interpret it and maybe everybody isn't going to agree as to the interpretation.

MR. BOOKER: Well, you would have to have a digest of the code.

MR. MCGILVRAY: I would like to make a comment for the benefit of the committee to send this after the permit is taken out is meaningless because the contract has been formed and it won't help them anyway. They're stuck; it's on its way. The only thing it might do is that they would be advised that there's something, but I don't think they would read it. But I think the contract is already done; they've paid their money; the money's in the bank; the guy's gone to work by that time.

MR. DEAN: There's another point here, particularly, for example, in Los Angeles County. In other words, there were permits for 96,722 permits issued last year, and there were only completions on 53,585. Now, you're sending out—what is it—30,000-40,000 more forms out there than ever was completed, I mean, on jobs. What happened to them I don't know. I can't answer that.

SENATOR COBEY: Under this bill?

MR. DEAN: No, no, I mean whether they threw it in the wastepaper basket and never did the job or something else. No notice of completion was ever filed. One of the two. I can't answer that.

SENATOR BEARD: It seems like an anomaly to me. Mr. Booker, at one time you suggested in your alternative approach that the owner be apprised of his rights and that he be told to see an attorney in connection with his rights, and then you objected to this proposed bill on the grounds that if the owner were notified that he might rather withhold some of his money, that it might be an objectionable feature and cause friction between the contractor and the materialman and the owner and the materialman.

MR. BOOKER: Senator, I think in many cases notices would be sent that we wouldn't send otherwise.

SENATOR BEARD: If he is told that he better protect himself that at that time he might have a tendency to feel protected or withhold some of his funds until releases were obtained. The more practical way to apprise him of his rights, don't you think?

SENATOR GRUNSKY: I wonder if I might ask this question of Mr. Bohn. I'm sure you've been following Mr. Booker's presentation and the other members of the committee. It still looks to me like what he's talking about is the expense of the materialmen and that in having to put on an extra girl or a full-time man, which, of course, is argumentative. Whether that would actually be required if you're as big as Central Supply and Granite Rock the question which was not answered is, what's the gross, why the cost percentagewise is very nominal, if you're just one man and a carpenter and a part-time office girl you're not going to have enough jobs to take you more than while you're eating your toast and coffee for breakfast or read the blue sheet on all the jobs you're working on, so I've come to the philosophical point that the Constitution has given, at least I assume the original rights are in the Constitution, and that is my understanding, and of course that gives everyone the idea that that's theirs as a matter of right as sacred constitutional almost God-given right, and they sometimes forget that for that preferred position they owe at least a scintilla of effort to protect the other people in the transaction, and it seems to me that to mail your notice to preserve this very special almost privilege of liens to the disaster of others to preserve your lien, which under the Constitution is what often occurs, which gave rise to the Los Angeles Grand Jury investigation and everything else. That it may be a little extra effort and cost on the part of the materialmen is only equity and a little bit of good conscience, and therefore I think that materialmen and those who are citing these questions of cost that maybe they might just feel a little sympathy for the other fellow and be willing to make a good Christian concession in exchange for this right which is theirs under the Constitution.

MR. DEAN: I have just one more thing to be considered in the picture here. Of course, that may be blowing our own horn maybe. We furnish to our membership a card which they fill in on every job they're selling, and send it to our office. We file that in what we call a notice of completion department lien and completion department, when that job is finished, when it comes through on the green sheet, as we're talking about here, or whatever legal sheet it might come to. In Orange County you have a different type of sheet from the green sheet. They have a card in our office and when that notice comes through we auto-

matically pull the card, fill in the date it was completed and return it to the member immediately in our next mail. In that way he knows when the job is completed. Now we do that service for a dollar, so he doesn't have to take the green sheet if he doesn't want it and he doesn't have to take the other sheet if he doesn't want to. We furnish that information to him on that basis.

SENATOR GRUNSKY: Incidentally, my question got kind of long, it really became oratorical rather than inquisitive, but was I right—I mean, is there any new issue other than cost that's been interjected here?

SENATOR DOLWIG: Mr. Booker as I understand it —

MR. BOOKER: I just mentioned one or two additional costs.

SENATOR DOLWIG: Will you enumerate them again so the committee will have them.

MR. BOOKER: Well, the additional girl, and you mentioned mailing cost.

SENATOR GRUNSKY: Well, that's cost. No, any other basic objection outside of cost and the cost of operating the office and the administrative chores attached to it.

SENATOR DOLWIG: You've already heard an expression insofar as your alternatives are concerned, as I understand Senator Grunsky's question you've enumerated the item of cost, now are there any other objections?

SENATOR GRUNSKY: Someone said something about ill will.

ASSEMBLYMAN HANNA: The question of whether or not the ill will would be created, as Senator Beard pointed out, between the material house and their contractor because of the notice to the owner or between the owner and the contractor as a result of getting notice.

SENATOR GRUNSKY: Well, why couldn't they take the ill will out on the Legislature and—

ASSEMBLYMAN HANNA: I think that's the answer—

SENATOR DOLWIG: Unless anybody wants to add anything further on this point I would like to ask Mr. Bohn to round this out now since we've gotten on a philosophical basis here.

MR. BOHN: I'd like to have permission, Mr. Chairman, to read a statement which was presented in Los Angeles not too long ago, but before I do that I would like to get down to some fundamentals if I might because we discussed this thing in some detail in Sacramento and it bears perhaps upon what's been said here earlier. Now, as I understand the operations of the Lien Law, the owner signs a contract with the building contractor for the payment of a fixed amount for the cost of construction and those installments must be paid in accordance with a contract regardless of what may or may not happen in the form of a notice. Now, isn't that substantially correct? In other words, the owner is bound by contract and the contractor is bound by contract and whether the owner gets one or a dozen notices from anyone he must still proceed with his contract unless there's some default, isn't that the situation? So that insofar as the materialman is concerned he has all his normal credit channels; he has all of his rights for attachment or whatever else he might have as against his basic debtor, and the lien right, as Senator Grunsky mentioned earlier, is something plus which

is given to him, in effect, to collect from someone other than his primary debtor.

If that's correct I would like to read this statement if I could, Mr. Chairman, with the idea in mind of later asking the representatives here if they agree with the comments which have been made. This statement, as I understand it, is by Mr. Ralph H. Hilton, Secretary-Manager of the Building Material Dealers Association of Southern California. This is his statement, which he made at a meeting called by Assemblyman Hanna. He says, "To say that the building material dealers in Southern California are confused, concerned and distressed over prevailing credit conditions and practices of the industry is putting it pretty mild. A condition that is abusive to the public is imminent disaster to us. We welcome this fresh approach and pledge our unqualified support. Construction is faced with a set of problems peculiar unto itself, and, to our knowledge, no set of rules has yet been devised that solves all of them, no ready-made packages available, nor could we hope for perfection were we to lift the best of the established rules and enact them into one package. What we need at this time is originality, bearing, etc.

"To point the finger at any one group, a rule of law or a recurrent situation and then say, 'that is where the blame lies' would be little more than idle gesture. It would be difficult to find someone or something in the entire picture that isn't blameworthy. We admit our due blame and we are satisfied to assume that all others admit theirs. Others have adequately elaborated on most of the problems peculiar to their segment of this industry and have submitted their proposals for a solution, so we will not go into them again here except to say that we are not at this time against any of the various proposals as such. We are of the opinion that legislation is the only means of correcting the problems and that the omnibus approach is essential. Each segment of the industry has its own special problems of approach and we have ours, but before going into our proposal, it seems fitting to briefly state our analysis of the overall problem as it affects us.

"Individually, a dealer could probably handle his credit problems satisfactorily, where the problem arises is in meeting competition. To illustrate, let us suppose that a plastering contractor, or for that matter any contractor, either misses his figure on a job, or else has contracted for work beyond his normal financial capacity, as a consequence he subsequently fails to discount his bills on the due date, the dealer then calls him and wants to know 'how come.' Individually, the dealer can get as tough about demanding his money as his policy or the case might warrant, but competitively the dealer might and often does, soften his demand so as not to drive the contractor to another material house that is anxious through ignorance of the contractor's predicament or a looser credit policy to take him on. In this way dealers become involved in extending credit beyond their own good judgment.

"The basis of this type of credit is where the problem generally arises. Logically, all credit should be based on an internal industry-approved credit rating. Unfortunately, the extended credit is all too often based on lien rights, which in the truest sense, are used as a threat rather than as a legal right. For our own part, we have attempted

voluntary control of the problem and have made precious little headway, with an occasional dealer tightening up his credit policy for the simple expedience of co-operative encouragement, but in general, the ramifications of the problem present unsurmountable odds that we have not been able to overcome.

"We are currently conducting a voluntary credit reporting program that is largely ineffective due to many circumstances. To enumerate, some dealers who are careful with their credit don't feel that they need the credit reports, nor do they recognize a duty to co-operate, others co-operate to a point, that is to say, they only report those accounts deserving an ordinary interest. Their favorite accounts and those they want to dump on some unsuspecting dealer are not reported. Also, there seems to be a general resentment among subcontractors against being reported at all. Other dealers who sorely need the information have a loose credit policy that is completely incompatible with reporting. Education alone will not help them, the problem goes much deeper into such elements as personnel, bookkeeping equipment and accounting procedures. Of course, there are those who co-operate and report faithfully, but without the full support of everybody the master reports are incomplete and often misleading. To add to the general confusion the competition among the manufacturers is extremely keen and it would appear that some have a special portent for picking inexperienced, inept or desperate dealers who are easily talked into desperate credit ventures. Then, to make the picture complete, out of all this confusion, the foundation has been thoroughly laid for a type of credit policy that we heartily disapprove of as being inherently dishonest. That is, to use the lien law as a credit base from the inception of the account and with the knowledge that the subcontractor's credit is nonexistent or is, in fact, bad. All too often contracts are let to this type of sub and it seems that there will always be some hungry dealer around to take the account on rather than to forego the business.

"Rather than to guess at the conditions mentioned or take someone else's word for it, the president and secretary of this association together have conducted an extensive grassroot study of the problem. They have visited and talked with all parties concerned on the supplier level and who directly concern us, and find that, without exception, corrective measures are desired, but it is frankly conceded by everyone that competition will not permit voluntary correction. In short, we have concluded that voluntary credit control won't work for us, we know that there must be new legislation that will make 'lien law credit' less attractive."

Now, the statement goes on, Mr. Chairman, to discuss a trust fund theory which Mr. Hanna is going to present later on, but I would like to ask, if I may, representative industry, if that statement which I just read is substantially correct to the best of all of your knowledge.

MR. DEAN: I happen to be very interested and it's true in every sense.

MR. BOOKER: I think, Mr. Bohn, that it developed in Sacramento, at our meeting up there, that that situation does not pertain in Northern California to the extent as indicated by Mr. Hilton in Southern California.

SENATOR DOLWIG: Is there any further disagreement? If not, I assume that everybody else is in agreement. All right, Assemblyman Hanna, we had you on the agenda here. Are you ready to go ahead with what you wanted to present?

ASSEMBLYMAN HANNA: Yes, gentlemen. To start off with, I would like to point out that the reaction I have from the approach on both your notice provision and on the Trust Fund Act with which I have a peculiar interest. You have to recognize the fact that there is responsibility working two ways in this picture. Liens arise out of things that are wrong with the contractor as well as with the material dealer. They arise with what's wrong in other segments of the industry too, and so I, in taking an omnibus approach, which, I think was referred to, I think that the Legislature would not be fair to the industry if it didn't get the whole picture.

In this picture we have the financing institutions at the top, the prime contractor or the owner, builder, promoter underneath him, the sub-contractors beneath him, the material dealers beneath him and the manufacturers of the goods, as again referred to in Mr. Hilton's report, at the bottom of that list and then below all of that, the owner or the ultimate consumer of the product is built out of this structure in the industry. In seeing what was wrong and what is behind causing liens to be impressed in the first place, start at the top, and here's the picture, as I see it. From the operation [break in record] called the George Powers Construction Company that in all four of these examples which I'm sure are not unique, the costs of money are very high taking into consideration the point system, discounts and interest rate. The cost of the construction, the ultimate cost of the product to the man that buys had run as high as 32 percent. Take into consideration the \$12,000 home that I'm talking about that the ultimate cost to the consumer on some of these projects has been in the neighborhood of \$4,000 for money costs alone. Now to the extent that there is a man operating in this kind of an environment the possibilities of his going sour are rather great and if he does go sour liens will result, is this not true? This is an aspect of this problem we cannot dismiss.

Then take the contractor himself. It seems that at the outset there is not enough financial responsibility in each individual contractor. I have said before, I think that it's a fair statement that under certain existing laws in the State of California it is easier for a man to become a licensed contractor from the standpoint of financial responsibility than it is for him to buy a washing machine on time from Sears and Roebuck. He has to show more in the way of background for financial responsibility. There is also, on the part of the prime contractor, it seems to me, more necessity for responsibility on his part for the financial responsibility to subcontractors and lots of times they don't pay any attention to that at all, it's "how much did he bid on the job," rather than how well is he qualified to carry out the bid.

Then it seems to me that we need stronger laws in relation to the diversion of funds. This is where this particular trust fund act that I am proposing hits at this particular point. Now this is true not only of the contractor but also of the subcontractor and in many of the instances where liens have applied it is on a basis where there has been diversion

of funds for one of several reasons. One, a diversion of funds out of a going project to buy land for a new project; a diversion of funds out of a going project to pay interest on houses not yet sold on a completed project; a diversion of funds of the worse kind to the personal needs of the contractor himself, to pay on his car, to pay on his house, to take a holiday to Las Vegas or someplace else. These things have occurred in diversion of funds. It seems to me that in that direction the contractors themselves have to answer and we have to take an approach there so that we don't point our finger at just one segment and say "you're responsible," but that everybody that brings up the level of the operation within this industry.

You talked about the supplier and the two points there, it seems to me, is that there's a stronger responsibility for operating on some kind of credit other than lien credit, as pointed out by Mr. Hilton. And secondly, it seems to me that some kind of notice as a condition precedent to lien or coming prior to lien is not going to be too onerous if it's correctly worded and correctly covers the situation where there is going to be a lien. Now let's explore that a little bit. From what I have learned there are certain things that in the business they begin to see when a man is going to be in a position where he's going to have to be liened or where his job's going sour, that certain little things turn up. First of all, he gets behind in his labor. The ordinary guy who is going broke is about two to three weeks behind in paying his labor. The ordinary guy who is going broke is not getting his 2 percent discount. He's behind on that. If he's going broke he's trailing from one pay schedule into another. Let's say he has certain mechanics and certain subcontractors and certain materials that are involved in his first operation, that is in getting down his foundation and getting his subflooring in.

If he carries that group over into the next group where he's getting his walls up and his roof on, he's in trouble and if he carries those further into the next so that these things begin to appear, and it seems to me that in that instance you have a situation where there's some contemplation of lien, and therefore, in those instances there might be some notice. These, after all, only represent about 50 percent at most. I think, of construction jobs and this we should keep in mind.

Then, as far as the injection of the manufacturer is concerned, it seems true that the manufacturer is entering in from the back door up into this business. They're operating and shopping for bids in leading material houses to take on subcontractors that are not financially responsible. What we can do in that direction I'm not exactly sure at the present time, but the industry itself should be alerted to the fact that we know that this sort of thing is going on and there is illusive practice from the bottom to the top, between manufacturer and financiers in shopping for bids and in participation. I know that there is at least one big lending institution that is integrating into this business from the top right down through the bottom, that they actually have front men who are contracting for them and they're in the thing on a participating basis actually, but still they have the protection of their first lien rights.

A query as to whether we shouldn't also, as you say, have some scintilla of protecting the public before they can get their priority and

rights and I think if we show the people in this business that we're willing to approach it on the overall basis and try to correct the inequities that exist at each segment so that no one segment takes the whole rap and that's why I say I don't like taking the Notice Bill alone or the Trust Fund Bill alone.

Now, the Trust Fund Bill that I have was borrowed primarily out of the Ontario Act, enacted in 1949 and I have the latest from it, and I'll read you the basic thing on this and then tell you what the exceptions are that I've written into our law. Here's the Ontario Act: "All sums received by a builder or contractor or a subcontractor on account of a contract price shall be and constitute a trust fund in the hands of the builder or contractor or of the subcontractor, as the case may be, for the benefit of the owner, the builder or contractor, subcontractor or the Workmen's Compensation Board, workmen or persons supplying material on account of the contract, and the builder or contractor or the subcontractor, as the case may be, shall be the trustee of all such funds so received by him and until all workmen and all persons who have supplied material on the contract or subcontractors are paid for work done or material supplied on the contract or the Workmen's Compensation Board is paid an assessment with respect thereto, he may not appropriate or convert any part thereof to his own use or to any use not authorized by the trust." And then it follows an offense and penalty, holding that if there is a diversion of this trust money that it will constitute a felony, it's something in the nature of embezzlement.

To me this is almost academic as far as an attorney's approach is concerned. These diversions are just as much a misuse of money as if I worked in a bank and borrowed the bank's money to put it in stock that I hope will pay off. Now, except in these instances where we don't have this problem, first, you can except almost at once two-thirds of the contracting business, the one-third of the contracting business which is under public contracting, because that's all bonded. On the large type of contracting that builds for big business, an office building or an industrial plant or they build bridges or this sort of thing, and come into the home building itself, that's where it should apply, in the home building field, that's about one-third of the contracting in the State of California.

Then further, it can be reduced to eliminate any of those who are bonded, either by the owner or themselves. If they went to take an alternative of going out to the bond to the extent that they are bonded there's no trust. To the extent that they in themselves pay ahead and put their money into it, this does not apply. If they have paid ahead for material or are using material that they themselves have paid for, that much money they can withdraw. To the extent that they have some kind of a builder's control which in itself is a separate kind of a trust fund on a private basis if they are in some kind of a builder's control situation, that would eliminate this. In effect, what it might do is have the salutary effect of forcing some of these better business practices.

The other provision that I have here is that they shall keep such bookkeeping procedures as shall be designated by the contractors' board, so that there may be worked out some kind of an arrangement whereby reasonable bookkeeping practices will be sufficient and the keeping of one trust fund for all jobs will be sufficient even as it is in

the case of the brokers selling bonds or the real estate men handling trust funds for various clients. They can put into one fund and they don't have to keep a complicated set of individual books on each fund. That, in essence, is what I have in that law. Whether or not that is adopted is immaterial to me, but what is very material is the fact that we in the Legislature, be it Senate or Assembly, approach this problem appreciating all the aspects of it and the responsibilities and of now practices on the case of each level, so that no one person feels, "well, now they've got it all piled on me," and they know that it doesn't rightfully belong all on them. So you're tackling the thing from two ends, why was the lien necessary in the first place, and what is the equitable way to apply the lien? Because in the final analysis, gentlemen, we're trying to protect the ultimate public and he's in it two ways. First, he's in it in the small contracting improvement stage where he's an owner, as where we have the swimming pool situation of Wahlstrom, for instance, with 300 cases in Los Angeles alone, of liens where they're paying anywhere from one and one-half to two and one-half times the contract price to get themselves out of trouble. The other instance is where they're buying the ultimate product of a house that was built by somebody else. Well, they don't come into the lien picture at all, but they buy the house and all of the evils that are attendant to a lien situation, where, for instance, the guy sees a deal going sour, he starts to cut corners immediately to bring down his price in it, and then the high cost of money involved in many of these transactions, which he buys ultimately and thinks he's paying for shelter and he is not. He's paying for the cost of this kind of operation within this business. That's my presentation.

SENATOR DOLWIG: Very interesting analysis, Dick, and I think it was very informative.

SENATOR GRUNSKY: I think you are to be commended, Assemblyman Hanna. Much of this is not new thought, but you're the first person who has brought it all together in one understandable and I think very logical presentation. I would ask you this, though. You've given a solution to everything but the lending agencies and the banks, the cost of money. That is a problem for which there's probably no solution. What do you have on that?

ASSEMBLYMAN HANNA: Well, I think that some of the solution will take this direction. I haven't worked out the legislation itself and probably it will take us a two-year period in studying this, but I certainly can see this ahead. Number one, definitely to my mind, we should legislate against the lending institutions themselves getting into the business of building, for this fundamental, philosophical reason, that wherever you have an encroachment of one segment of an industry into the operations of the other segments, you're going to get evils. This was pointed out in the fine period back when Louis Brandage wrote the book *"Other Peoples' Money and How to Use It,"* when the bond sellers, the House of Morgan, got into the railroad business and the steel business and then they got an air for business and they were making money hand over glove, coming and going. Nobody who is in the business legitimately can compete with that kind of a situation, and this would be just as true in the building industry as it was in the high-

finance picture, so I'd say that definitely we can legislate against this sort of thing happening.

Secondly, we should legislate and take a very careful look at the various ways in which money costs come into the building business, and it will take a separate approach on each one of these as to when—well, first, let me explain a couple of these situations which I think need looking into. Let's take a situation where a lending institution lends money out, presumably upon the building or constructing of a house, say for \$4,000, that's what it cost to build the house, but behind the scenes it has been agreed between the builder and the lending institution that he's going to utilize a portion of this money to buy the land. Now, he's going to make up the difference between what he's put into the land out of his sales program which rolls ahead of his completion of the total unit, but knowing this ahead of time, some lending institutions have advanced a payout in advance of construction, for which they get a premium a point. Now, to me, if they want to take that risk they can become a partner or at least a joint venturer in this case and pick up the risks instead of having the first trust deed on that land so that they can make themselves whole and say, "Well, we had nothing to do with it in this instance and we're trying to pay off," then we should hold them liable and this should be an approach on it.

SENATOR DOLWIG: There should be some responsibility.

ASSEMBLYMAN HANNA: Absolutely, some responsibility. If they're going to take the fruits, let them have a portion of the burdens, and it seems to me that that isn't a balanced picture the way it's developed at the present time, and I don't think very many in the Legislature realize what has been going and the number of ways it can pick up points.

Another way you can pick up points, supposing I have the X.Y.Z. Savings and Loan Institution and Ralph over here has the P.D.Q. Savings and Loan Institution. We have a working arrangement whereby he carries the loan on the construction on Job A, and I have the loan on construction on Job B. I can make the deals with the contractor where he will take the purchase loan on B and I'll take the purchase loan on A and he gets a 3 percent brokerage fee coming his way and I get a 3 percent coming my way, and that's pretty par for the course generally. Well, the question is as to how much of that goes on, because it's a pyramid point, it's kind of like a couple of doctors going down in the morning and saying "Look, I've got an operation this morning; you've got one. I'll have my nurse do the anesthetic for you and you have yours do the anesthetic for me, and maybe it's the same one, but we both get an aesthetist's fee out of it."

There are certain of these practices I think we should—maybe they're all right, maybe they're legitimate, but to the extent that they're adding on to these percentages of total overall cost of money in the operation of the building business we should know this, we should give an honest evaluation of it to the public and where there are certain things that just can't seem to be reasonably sustained we should put in some kind of a bill to control it.

SENATOR COBEY: Mr. Hanna, if your trust fund bill should become law that in itself would operate to reduce this cost of money,

should it not, because if you have that trust fund operating there's less risk involved to the lender?

ASSEMBLYMAN HANNA: That's right, to the extent that the risk is in there the cost of money goes higher.

SENATOR COBEY: That is true.

MR. BOHN: Mr. Hanna, are you having any difficulty with the constitutional question. It seems to me that once before an attempt was made to constitute these funds into a trust fund and to make a felony out of it and the courts declared it unconstitutional on the ground that this was a debtor-creditor relationship and not a trust relationship.

ASSEMBLYMAN HANNA: You're talking about the Holder case?

MR. BOHN: Yes.

ASSEMBLYMAN HANNA: Yes, and I am very well aware of the Holder case and so are the boys in the Legislative Counsel's office and they think that we can draw a law that will not be in violation of the constitutional question raised in the Holder case. Now they're not saying that categorically; they just tell me they think that, and, of course, it's going to be up to the courts to determine whether we can.

MR. BOHN: I'm wondering if you have given any thought to the idea of placing a mandatory provision in the contract itself. In other words, it's my understanding that if your contract creates a debtor-creditor relationship it's pretty difficult to switch that into a trust, but it might be possible, I would think, to require that the contract contain these terms. Now, if that's the situation, then it's a trust created as between the parties themselves, under requirements of law and then you wouldn't have any difficulty.

ASSEMBLYMAN HANNA: Well, this is certainly a very good suggestion, Mr. Bohn.

SENATOR GRUNSKY: Also, it's unconstitutional, isn't it, to limit the right of contract?

SENATOR COBEY: Not for public policy it isn't. Also, judges have been known to change their opinions on constitutionality.

ASSEMBLYMAN HANNA: This is something that we as legislators cannot turn our backs on. We have a growing amount of public pressure to do something in this field, regardless of how the industry feels about it. This is true, and I begin to feel it myself. Out of just one short appearance on television on this problem, why, the mail and telephone calls I got indicate to me that there's a — well, the grand jury investigation should indicate this too as to what this feeling is and particularly in Southern California where so much of this problem confronts us. I don't see how a representative in government can turn his back on it.

SENATOR DOLWIG: Any further questions?

MR. BOHN: I simply wanted to note for the record that the October 2 issue of *Building News* quotes the board of directors of the Building Contractors Association of California as being in favor of doing away with the lien laws altogether. Is there any other sentiment for that, gentlemen?

SENATOR DOLWIG: Mr. Knorp, did you want to add anything?

MR. KNORP: Well, yes, I would, Senator. My name is Albert F. Knorp, representing the Home Builders Council in California. We've

been working with Assemblyman Hanna, but this field is such a large field and the impact upon the economy in the State is so great that it isn't going to be done in just a few short meetings such as this. I can't comment on Assemblyman Hanna's bill on trust funds, because I have yet to read the bill and had it expeted as to its effect on the industry. I'd like to leave that in abeyance until we can see the bill, but I'd like to point out one thing that he did touch on which might have been under study today had not the Rules Committee of the Senate suddenly got very money conscious and cut out practically all appropriations and certainly all new appropriations for interim studies and that is the need, to make a thorough study of this money situation in an attempt to stabilize this industry.

It's needed and I think that the study has to be conducted by the Legislature in order to give it the proper impact on the State ultimately. The cost of money, fluctuation of conditions is such that it causes widespread losses. It brings about many of the problems that we're talking about today, and its effect on employment is extremely serious. We're talking about, perhaps, the biggest industry in the State today, dollar wise, and I think that the Legislature would ultimately be well justified in making a very large appropriation for a full-breast study in an effort to find a way, if it's possible, to anticipate the demand for homes, which I think is going to continue for many years in this State, to see if we can't set some sort of plan that will permit those in the industry to look ahead 5, 7 or 10 years, not from year to year, and have to cut their cost according to a staggering market, and you run into the very problems that we're discussing today, and I do urge upon you when you look at this whole thing to keep that in consideration because there, and I'm not blaming anybody, any field, not bankers, not savings and loan, it's just that this State has grown so fast that we couldn't anticipate the problems that came with it and it's high time we do.

Now getting back to the subject that's before you, I'd like to echo Mr. Ross's statement that we do urge some method being established by the Legislature whereby the owner and the general contractor know to whom they owe money; that's all we're wanting to know. Maybe we could put it into words something like this "that a lien to be effective, that is, the man who is taking out the lien show proof that he gave notice to the owner and the contractor so many days before he filed the lien." We're not defending and we're not trying to defend any contractor or subcontractor who fails to pay his just bills, he should be liened if that's the only thing that's left for the materialman. What we're after are the hidden claims that have caused so much trouble, the third party claims, and we do believe that maybe just a simple bill requiring the materialman and supplier to show proof that the owner and the contractor, or either one, was notified of this responsibility so many days before the lien was filed.

Now you gentlemen are lawyers, and I'd only get into a lot of trouble putting that into words. We don't ask for any great big expensive setup. We think the thing could be done and would only be applied in those cases where the lien was imminent, so there wouldn't be any great expense connected with it any more than going down and

filing the lien. Just write a letter to the guy and say, "Look. If in 10 days you don't pay us we're going to slap you with a lien." And that's as simple as sending the lien out itself, and I think it will save a lot of lien troubles.

SENATOR GRUNSKY: And I think that it should be understood stood when you speak about not solving the problem in a few short meetings like this, this is just one of a series of these —

MR. KNORP: No, I meant the overall problem Senator, not the Mechanics' Lien Bill.

SENATOR GRUNSKY: And I think that it should be understood by all, if you don't already clearly understand it, that a great deal of work and effort has gone into this in this interim with the specific understanding that we were going to present a bill, at least insofar as the notice provisions are concerned, at the forthcoming session and if anyone kicks it around further and says, "Well, let's refer it for further interim study," you're going to offend a lot of legislators who could be better spending their time at home than listening to —

MR. KNORP: Senator, I applied my remarks, please, to the need for a study of stabilizing the industry. They were aimed at that portion of my remarks.

SENATOR DOLWIG: Gentlemen, I think the subcommittee will make a recommendation to the main committee relative to this overall study. I think Assemblyman Hanna's presentation certainly outlined the need for it and what the rest of you gentlemen have indicated. Now insofar as where we stand here is concerned, I want to make a definite check now. As far as Mr. Dean, and as far as Mr. McGilvray are concerned, what is your position on the proposed legislation? Are you in agreement with it except for some minor amendments? Am I stating that correctly?

MR. MCGILVRAY: Yes, Mr. Dean has authorized me to state that we are in major agreement with the proposal to amend, rather to add, Section 1193 with some minor amendments that Mr. Ross and I will present to Mr. Bohn well before January. In fact, we'll try to do that this week.

SENATOR DOLWIG: Mr. Booker, as I understand it, you're opposed to the proposed bill. With or without amendment you're opposed to the proposed bill?

MR. BOOKER: Opposed to the Notice Bill, yes.

SENATOR DOLWIG: All right. Now, Mr. Knorp and Ken, you are in favor of this proposed bill, with some additional amendments to be worked out. Is that correct?

MR. ROSS: Yes, that's right.

SENATOR DOLWIG: Now, is there anybody else here who represents any segment of the industry—that is, for the bill with amendments at the present time? Anybody else?

SENATOR GRUNSKY: Let me just point out one thing, may I, Mr. Chairman? I got a letter from Tom Knight indicating that he had not apparently been on the mailing list through no fault of anyone of this, and some of the California Manufacturer's Association membership were interested in the lien laws and their not being here, of course, somewhat defeats our purpose of having all sides and all interests heard

with the regard to your subcommittee action, but I would suggest that Mr. Bohn definitely clear with Knight to find out if any of his members are not represented through other channels here today. I've got an idea that they are probably members of his association and also of these other associations if they're interested, so they in effect have been heard, but we should check that out.

SENATOR DOLWIG: Mr. Bohn, will you get in touch with Mr. Knight? Will you send him a copy of the proposed bill and ask him to give us any viewpoints or any comments that he has on the bill? Is there anybody else who is opposed to the proposed bill with or without amendments? Ken, did you have something further you wanted to ask?

MR. ROSS: Yes, we, as I indicated before, have a similar Notice Bill before the Assembly Interim Judiciary Committee and we have withheld trying to move it or have it heard prior to trying to thrash this thing out here before the Senate committee. I'm wondering if you have any idea when your subcommittee will come up with its recommendation and if it's possible that it will be in time for us to have the Assembly Interim Committee hear the same measure prior to January?

SENATOR DOLWIG: Senator Grunsky, the chairman, is here, just for the purpose of discussion. I might point out this possible procedure, that you now have submitted this proposed bill to the subcommittee, the subcommittee will hear any comments from Mr. Knight's clients and then we will determine what action it is going to recommend to the main committee if that's agreeable with the chairman.

SENATOR GRUNSKY: And I think we already know approximately when this subcommittee is to report, don't we?

MR. BOHN: We have scheduled meetings of the main committee and subcommittee, one in October and one in December.

SENATOR GRUNSKY: Have you yet scheduled this subcommittee report for one of those? We know it's going to be one or the other. Do you know which one?

MR. BOHN: I think we wanted it for the first one, depending upon this particular bill, we wanted it for the October meeting if we could get it.

MR. DEAN: Mr. Bohn, when do you think it will be?

MR. BOHN: As I recall, it's scheduled for the first week in October, in Coronado, California.

ASSEMBLYMAN HANNA: Mr. Chairman, may I add one more thing to the committee's considerations, that mainly I believe the step contemplated here is a logical forward step from Section 1190.1, which we already have in the code, that provides at the present time that any of these people may at a time prior to the expiration of the lien period give notice and that they must, upon the owner's request, provide this notice as a condition precedent to lien and as a matter of fact that is in the code now and I think what we're doing is taking a logical step forward here because, as a practical matter of fact, as pointed out by Senator Beard, that the owner has no way to know who to contact, I mean he really doesn't know the business well enough to know what his next step will be, but there are people who are in a position to

know who and when to contact, and that's what we're trying to determine now.

SENATOR DOLWIG: All right then, as I understand it, the main committee will meet on December 4, 1958, in Los Angeles at the State Building and will consider this matter further at that time.

5. FULL COMMITTEE HEARING, DECEMBER 4, 1958, STATE BUILDING, LOS ANGELES, CALIFORNIA

a. PROPOSAL CONSIDERED: REDRAFTED MECHANICS' LIEN NOTICE BILL

Present:

Senator Donald L. Grunsky, Chairman, Interim Committee.

Senator Edwin J. Regan, Chairman, Standing Committee.

Senator Stanley Arnold.

Senator James E. Busch.

Senator Carl L. Christensen, Jr.

Senator Nathan F. Coombs.

Senator Richard J. Dolwig.

John A. Bohn, Committee Counsel.

Witnesses appearing before the committee were as follows:

James M. Dean, Secretary-Manager, Building Material Dealers Credit Association.
Kenneth G. McGilvray, Attorney, Building Material Dealers Credit Association,
Los Angeles.

Kenneth Ross, Associated General Contractors, Southern California Chapter.

Leslie W. Miller, Construction Industry Legislative Council.

Harry Stewart, Executive Director, Building Contractors Association of California.

Gardiner Johnson, Attorney, Associated General Contractors, Northern California Chapter.

C. C. Catrell, Attorney, Northern Building Material Dealers Association.

Kurt Elsbach, Building Material Dealers, Northern California, San Mateo.

Austin Zelmer, Credit Manager, Central Supply Company, Granite Rock Company,
Builders Exchange, Santa Cruz County.

Tom Samuels, Manager, Building Material Dealers Association, San Jose.

Leo E. Hubbard, Credit Manager, Hayward Lumber Company, Los Angeles.

The proposal considered at this hearing was in the following form:

*An Act to Add Section 1193 to the Code of Civil Procedure,
Relating to Mechanics' Liens.*

The people of the State of California do enact as follows:

SECTION 1. Section 1193 is added to the Code of Civil Procedure, to read:

1193. (a) Except one under contract with the owner or one performing actual labor for wages, every person who furnishes labor, services, equipment or material for which a lien otherwise can be claimed under this chapter, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given written notice as prescribed by this section, to the owner, and, unless such person is under contract to the original contractor, such person must also cause to be given such notice to the original contractor. The notice shall contain a general description of the labor, service, equipment or materials furnished, the name and address of such person furnishing such labor, services, equipment or materials, and the name of the agent, if any, who contracted for purchase of such labor, services, equipment or materials. If an invoice for such materials contains this information a copy of such invoice, transmitted in the manner prescribed by this section, shall be sufficient notice. The notice may be sent at any time after the labor, services, equipment or materials are furnished, but in no event later than fifteen (15) days prior to the actual filing of a mechanic's lien.

(b) Any agreement made or entered into by an owner whereby the owner agrees to waive the rights or privileges conferred upon him by this section shall be void and of no effect.

(c) Service of notice required under this section may be given by delivering the same to the person to be notified, personally, or by leaving it at his address or place of business with some person in charge, or by registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given, at the address shown by the building permit on file with the authority issuing a building permit for the work. If no building permit has been issued or if the building permit does not contain the address of the person on whom notice was required to be served under this section, then service of such notice shall be by certified or registered mail addressed to the job site with the envelope containing the name of the owner, if known, or if not known, then merely "owner," or to the original contractor, if known, or if not known, then to "general contractor." When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

Senator Donald L. Grunsky, chairman of the interim committee, called the meeting to order as follows:

SENATOR GRUNSKY: We have an agenda before us, I trust all of you in the audience as well as committee members are familiar with it so we won't take any time reading through it.

The first item of business is the Mechanics' Lien Notice Bill, which I believe accounts for a great number of you here and following that we will go on with the other agenda. We are rather pressed for time and I don't think that we are going to be able to go into a full-scale hearing on the merits of the bill, but I hope that in the time allotted we will at least be able to get a report of the status and developments.

First, let me introduce the members of the committee to all of you so that you will know who is here. We have on my far left Senator Richard Dolwig, next to him proceeding to the right is Senator Nathan Coombs, myself, Senator Grunsky, then the counsel of the committee, Mr. John Bohn and then Senator Jim Busch, Senator Carl Christensen and then Mrs. Sayles, who is an attorney and assistant to Counsel John Bohn.

John, will you brief us on the present status of this Mechanics' Lien Law as to where we are supposed to be as of this moment. As I understand, it was submitted for reconciling differences and coming up with a solution, where do we stand now and what is before us this morning.

JOHN A. BOHN: Mr. Chairman, as you know, there have been two prior hearings on this bill. The bill was originally proposed by most of the material dealers associations, with some exceptions. There have been two prior hearings. In each case there has been opposition to the bill and in each case the chairman presiding suggested that every effort be made to reconcile those differences and to come back to the full committee with something in the nature of a semifinal report immediately prior to the beginning of the 1959 Session. The bill, therefore, was set on the agenda this morning for a report of the sponsors of the bill together with a statement of any persons who still may be opposed to the bill and their reasons for it. There is no recommendation before the full committee from the subcommittee, the bill has taken longer to work out than anyone anticipated, so in view of the fact of the immediacy of the 1959 Session the matter was put on the agenda for the full committee today with the hope that the full committee would make a determination either to proceed with the bill, to postpone it for another year or to take unfavorable action, if that were the final decision of the committee.

May I then, Mr. Chairman, before calling the witness, also state that in accordance with the policy of this committee, notice of this hearing

and of all the bills pending before the committee at this hearing was sent to our entire mailing list. That mailing list consists of everyone that we have ever heard from who states an interest in a particular subject matter and also persons who have appeared at prior hearings. If anyone here is not on our mailing list and would like to get on the mailing list we can add your name here today. May I proceed?

SENATOR GRUNSKY: Yes, will you call the first witness.

MR. BOHN: Mr. Dean, would you come forward please and give us a report and status of this bill. May I ask also that you identify yourself for the record by name, position and address.

MR. DEAN: J. M. Dean, Secretary-Manager of the Building Material Dealers Credit Association. Since our meeting in San Diego the bill which Mr. McGilvray is passing out was drafted and I would like to have Mr. McGilvray speak on that bill himself, because he is more familiar with it than I am.

MR. MCGILVRAY: Mr. Chairman, members of the committee, this bill was reviewed with Mr. Ross after the meeting in Coronado.

SENATOR GRUNSKY: Can everyone in the back hear the witness? Thank you.

MR. MCGILVRAY: I'm Kenneth McGilvray, representing Building Material Dealers Credit Association of Los Angeles, practicing law in Sacramento. After that meeting it was modified a little and the effect of this bill is to require a materialman or one furnishing material and labor or services, like a plumbing contractor, to give a notice to the contractor and the owner within 15 days prior to the time he files his mechanics' lien. For instance, a materialman today on a usual job has 30 days after notice of completion is filed to file his lien. This would give the contractor, if he didn't get his notice within 15 days after he had filed a notice of completion or a notice of completion was filed, knowledge that he could go out and close out his job and make his payments. It does not require notices on the usual job and we think that probably it will speed up payment and settlement, it gives the effect of cutting out a period of time when the liens could be filed and the man might make payment. This is an attempt on the part of materialmen to work with contractors to avoid double payment. There was one clause at the bottom of the first paragraph that if they didn't file a notice of completion we would do something else by agreement and I think the contractors group will agree that that clause can come out as the bill was considered in Coronado. As far as I know, building materials groups in Southern California are in favor of it and a good many in Northern California, although there is some opposition. Our group does sponsor this bill, we've proposed it, we feel that it is an attempt to do something along that line. Mr. Ken Ross of the Associated General Contractors and all the groups have been fully informed. Mr. Harry Stewart of the Building Contractors Association, Los Angeles, helped draft this revised version.

MR. BOHN: Just one minor question, Mr. McGilvray. You sent to me the amended bill or the bill with the proposed amendments in it and in an accompanying letter you added the word "equipment." You stated that it could be added at each portion of the bill right after the

word "services." Now I notice in line three the word "equipment" has been omitted, is that a typographical error?

MR. MCGILVRAY: It should be added; it's typographical; it should be "services, equipment or materials."

MR. BOHN: Is this the correct statement of the history of this situation? Some years ago the Grand Jury of Los Angeles County contacted the then Senate Judiciary Committee and asked the committee to look into the question of mechanics' liens to see what could be done to provide additional protection to the owner. As I recall that situation, that grand jury investigation arose out of a bankruptcy of a very large contractor in Southern California. Pursuant to that request, the Senate Judiciary Committees, over the several years since then, have looked into the matter and have asked the co-operation of interested parties in preparing some sort of remedial legislation. The bill which you are submitting here is your suggestion and the suggestion of your group as to how partial relief can be given, is that substantially correct?

MR. MCGILVRAY: That is substantially correct, yes.

MR. BOHN: Now this bill, if passed, would not, however, protect the homeowner in the sense that there still is a possibility of double payment under the bill, but you do believe it would cut down those cases where there would be a requirement of double payment.

MR. MCGILVRAY: That is correct.

SENATOR GRUNSKY: Any questions of the members of the committee?

SENATOR DOLWIG: Yes, Mr. Chairman. Your last statement that it would cut down, could you indicate what you mean by cut down in the sense of double payment?

MR. MCGILVRAY: Well, of course, the homeowner is one thing, public work is another thing. Public work is all bonded and there are two phases of it. On bonded jobs you have a lot of intricacies, notices, there is a six months period. We will go along with industry to the same effect that this bill would apply on public works, but a man can sit back for six months on a public works job and file a lien, the contractor has settled everything. We have a case pending in Lodi, there's several thousands of dollars, excellent contractors and they are making double payments. If some type of this bill was in probably our people would have given the notice in time, they would have been well and adequately protected. They were sitting back hoping that the guy would pull out of it and they didn't do it, the contractor paid off and an assignment or a bankruptcy came in.

Now, on homeowners, to answer your specific question, we feel that where the homeowner has the contractor, that cutting down a period of time a little bit will give that contractor an opportunity to check his subs out better and if he doesn't get this notice he can pay these subs and he won't be then stuck with a hidden or secret lien as you now have by some material supplier who comes in at the last minute and files his lien. The homeowner will be protected. It will not protect the homeowner from the fraudulent or the contractor who just steals the money or misappropriates the money. There are some bills in that we are not handling or are not particularly interested in that might do that, or there's one provision for a bond that was discussed, for all contractors to be bonded.

SENATOR GRUNSKY: For the record, and in keeping with the policy of our committee, now are we at the point where with this draft you have exhausted all your efforts to reconcile the differences in the industry, all segments of the industry, and that further consultation and conference between yourselves and the opponents of your original position would be ineffective and futile?

MR. MCGILVRAY: Well, I think we have come a long way. I think Mr. Ross will state that he is in agreement that we should give this a try and see how it will work.

SENATOR GRUNSKY: The point I'm getting at is, are you ready for final action of the Senate committee on this draft and as far as anything further to be done it will have to be done by the Legislative Committee, you can't reconcile any further differences within the industry?

MR. MCGILVRAY: We don't think that there are any substantial differences right now; we are in agreement with them and would submit this as a final draft.

SENATOR GRUNSKY: Any further questions of the committee?

SENATOR COOMBS: Have the materialmen and others that would be interested in this proposed change received copies of this proposed amendment? They are all on notice, are they?

MR. MCGILVRAY: Yes, they are, Senator.

SENATOR GRUNSKY: Further questions of the committee? Mr. Bohn, do you have further witnesses?

MR. BOHN: May I ask at this time, Senator Grunsky, that the other groups represented here who are for this bill step forward and simply identify yourself and state your position on the bill before we call for any opposition.

KENNETH ROSS: Mr. Chairman, my name is Kenneth Ross, representing the Southern California Chapter of Associated General Contractors of America, Los Angeles. I also have been asked to speak on behalf of the Central Chapter of the A.G.C. and I believe Gardiner Johnson, representing the Northern Chapter, is here and may wish to also be heard. This draft that you have before you this morning represents in form what we have been talking about for some time. Actually, I have not seen this until this morning and I assume that it incorporates all that we have agreed on prior to this time.

There are two major differences, I believe, from the draft as we considered it in Coronado at the last meeting. At that time there was talk to the effect that notice should be given either 10 or 20 days, that's a difference of opinion, we wanted 10 days and the material people wanted 20 days after the filing of the notice of completion and notice 35 days after the completion of the job if no notice of completion were filed. This draft calls for notice 15 days prior to the filing of a lien. Now that actually represents some other compromise between the two of us, one wanted 10, the other 20, and rather than require the notice 15 days after the filing of the notice of completion, it will be noted that we are suggesting that the notice be given 15 days prior to the filing of the lien, if the notice of completion is filed or essentially the same thing. Since that time also it has been requested by the Material Dealers Associations supporting this that we remove the provision requiring

notice within 35 days on completion of the job if no notice of completion is filed.

Now, our chapters actually have not met and officially acted on this request. I have talked to the chairman of my Legislative Committee and he in turn with members of our committee, we somewhat reluctantly agree with this; we feel that every little downgrading of it whittles down the effect of it as far as our chapters are concerned and the general contractors are concerned, but I can say that unofficially at least our chapter will support the deletion of this requirement. The central chapter has taken no action on this and I cannot speak for them in this behalf nor for the northern chapter. Aside from that, I believe the history that Mr. Bohn gave of the hearings and of the various interests concerned certainly is true as I see it and I see no need to get into that further. We stand on the position that we have taken formerly; we believe that this bill will not do for the owner and the general contractor what the original S.B. 806 would do. On the other hand, we realize that 806 was a very controversial bill as far as building material dealer people were concerned. We do feel that this bill will be effective to a degree and we therefore are willing to support it.

SENATOR GRUNSKY: Thank you. Any questions?

MR. BOHN: Yes, just one question. I heard some figures earlier as to the extent of this problem in Los Angeles County and I just want to ask you if, in your opinion, they are substantially correct? It is my understanding that over 53,000 notices of completion were filed in Los Angeles County in 1957 and of that number approximately 22,000 of them had liens filed, is that substantially correct?

MR. ROSS: I am sorry, Mr. Bohn, I am not familiar with the figures, I really don't know.

MR. BOHN: May I interrupt to ask Mr. Dean that question?

SENATOR GRUNSKY: Yes, Mr. Dean, would you come forward so that we can get these figures in the record.

MR. DEAN: Mr. Bohn and Senator Grunsky, in 1957 there was filed in Los Angeles County 53,585 Notices of Completion and there was filed in the same time, for the year 1957, 22,919 liens. This year at the end of November, November 30, 1958, there has been filed in Los Angeles County 38,129 completions and 14,587 liens.

SENATOR GRUNSKY: Thank you. Any further questions by members of the committee? Thank you, Mr. Ross. Mr. Bohn, our next witness.

MR. BOHN: Mr. Miller, do you want to speak in favor of this bill?

LESLIE W. MILLER: Mr. Chairman, gentlemen, Leslie W. Miller, representing the Construction Industry Legislative Council. We have already been on record as supporting this draft, but my position is pretty much the same as Mr. Ross'. This is the first time that I have seen this present amended copy which has deleted the paragraph pertaining to notice of completion, so I can't speak officially for our organization, but I think I can safely say that we will go along with this present draft. But as I say, I cannot officially speak because this present amended draft has not yet been brought to the attention of our organization.

MR. BOHN: The details have, however, been discussed with representatives of your organization, as I understand it.

MR. MILLER: That is correct, Mr. Bohn, yes. Thank you, gentlemen.

MR. BOHN: Is there anyone else who wishes to go on record in favor of this bill?

HARRY STEWART: Mr. Chairman, gentlemen. I am Harry Stewart, Executive Director of the Building Contractors Association of California and also representing the Home Builders Council of California. Mr. Ross, I think, has stated almost exactly the position of both of these groups. We are also meeting this afternoon and tomorrow to get the official O.K. on it, but all that I have talked to so far say that the amended version is fine with them.

SENATOR GRUNSKY: Incidentally. I talked to Mr. Al Knorp on the phone; he discussed this with you, did he not?

MR. STEWART: Yes, he did.

SENATOR GRUNSKY: And I believe he stated that you were authorized to state for him that he intends to recommend to the Home Builders Council at this meeting which apparently is going to eliminate the 35-day clause and then go along with the proposed draft, is that substantially correct?

MR. STEWART: Yes.

SENATOR GRUNSKY: Thank you.

MR. BOHN: Is there anyone else who wishes to go on record as in favor of this bill? Anyone who wishes to speak in opposition to the bill?

GARDINER JOHNSON: Mr. Chairman, before you get to the opposition, in this instance there may be sort of a middle ground and I would like to get in before the opponents start. For the record, my name is Gardiner Johnson, 111 Sutter Street, San Francisco. I am an attorney representing the Northern California Chapter of the Associated General Contractors. Now factually, as far as this present amendment is concerned, our situation is the same as the people who have addressed you. We received the draft with the two amendments this morning, so we've had no opportunity to discuss it. We are different from previous speakers, I would say, on two points. In the first place apparently this problem, the basic problem is predominantly one in Southern California and I think does not exist in any way near the same proportion in Northern California, which is the area in which our members operate.

We would not presume to speak against a solution which would meet a basic problem in Southern California if we thought the legislation had some real possibility of cutting down the extent and the proportions of the problem. Secondly, because of the nature of their operations, our members are predominantly, I'm careful to say predominantly, contractors who operate in the public works field and primarily the Northern California Chapter is not in the building phase, but rather in the heavy and the engineering field, although there are in the chapter members who have built homes very extensively. Primarily, this is a home builders problem; that's where the pinch has come and our attitude has been through the months of discussion of this legislation to stand by and watch the developments because the peculiar thing is that a contractor as licensed under state law, as you gentlemen know, can vary all the way from a man that carries his office in his hip pocket and does very small alterations up to the very large operators who operate throughout

the world, many of whom are our members, and you have to take the same very simple definitions and apply them up and down that full gamut of operations, and so our members don't want to become overly zealous in speaking against a solution to a problem which is predominantly that of a basically different group.

We are not convinced, let me make this point, it is dangerous to kick statistics around, because I think no one has demonstrated to our committee that these solutions will in a large extent solve this problem, there is a hope that they will, but I think there has been no concrete demonstration of that. And then there's another thing that always makes a contractor, or for that matter, any business man, hesitate before he supports some of these bills and that is the interminable problem of record keeping. You can just put yourself out of business keeping records and contractors who are plagued with this problem are reluctant and I think this is why some of our members hesitate to support this legislation; they are reluctant to go on record in favor of any legislation which will increase paperwork and bookkeeping and the costs of having these records kept and the notices gotten up unless they are convinced that there is a real chance that it will do some good. So gentlemen, I know it is always difficult to come before a committee and say, "we can't make up our minds," but this is a gray area, this is one of those fields where it isn't a matter of somebody being a hundred percent right and the opposition being 99 percent wrong; this is a gray area and because we are predominantly not in the area geographically or predominantly not in the area from the basis of operations, we have sort of stood on the sidelines and we want to see what comes out of these discussions such as this amendment this morning before we take a position. Now there will be a convention of our organization tomorrow at which these amendments will be reported. I don't assume there will be action taken there, because normally these things are passed on by committees instead of by conventions, but whatever it's worth in view of the state of the record I wanted to report that to you. I would say that I would not want to leave this rostrum without expressing to you gentlemen that the facilities of your committee has been of great help in trying to bring together the different groups who take opposing views on this and I'm not convinced that the maximum has yet been reached, but progress has been made. Thank you very much.

SENATOR GRUNSKY: Question?

MR. BOHN: By way of question, Mr. Johnson. It was my general understanding in the beginning phases of this discussion that the general contractors themselves would be the ones who would benefit the most by a bill of this type, on the theory that they came forward at previous hearings and complained in substance that there were hidden charges against them that they couldn't possibly have known about, in other words, materials or by subcontractors, that type of thing, and they were the ones, as I understood it, who were originally advocating some form of a notice bill.

MR. JOHNSON: Yes, that's correct, Mr. Bohn, but the problem there is the one that I indicated, that when you say general contractors you're talking about a great variety of people and it is true, of course, that all general contractors will support any step that they are sure will

eliminate double payment, anyone would do that. They are not going to rush forward to support measures which will require a lot of additional paperwork and office work unless they are convinced that by bringing that additional burden under themselves they are actually solving a problem, and so I think you appreciate that when you say general contractors.

I believe that I heard the first hearings in Sacramento some four years ago and my recollection is that at that time the contractors who were expressing the need for this legislation were predominantly home builders and among them I would say predominantly in Los Angeles County, and as to them, there is a real problem, but as you get away from this area and away from the home building operation the balance tends to shift and it's one of those twilight zones. You are quite right, the demand did come from general contractors.

MR. BOHN: By way of further clarification, it is my understanding that if this bill moves along or even if it doesn't, a similar bill is going to be proposed to cover public works situations. Will your group also take up a companion bill of that sort and give it consideration?

MR. JOHNSON: They have already done so as I understand, Mr. Bohn. In fact, I think, as I recall, I was away during the session last year, but my recollection is that the group supported and sponsored such legislation. I know they have done so before.

MR. BOHN: That was my impression and I wondered, so that the remarks that you made today on this bill do not necessarily apply to a bill which would cover public works situations.

MR. JOHNSON: No, not necessarily, because the public works bill would be more directly in our field and I would say our members would be those who would be predominantly interested in that, much more so than the home builders, naturally. Thank you.

SENATOR GRUNSKY: Thank you, Mr. Johnson. Next witness.

MR. BOHN: Is there anyone present who wishes to speak in opposition to this bill?

MR. COTTRELL: Mr. Chairman, I am C. C. Cottrell, attorney, 210 North Fourth Street, San Jose, representing the Northern California Building Material Dealers Association here. I want to join I think in what Mr. Johnson had to say, that this problem is largely one of the south and largely due to a matter of internal management and good policing. We do not have the same problem in Northern California that apparently is so prevalent in the south and it's only human and natural that when we begin to examine the so-called "Notice Bill" that we have not been really in on these dealings. I mean the group that have prepared this have been more or less contractors, and in good faith, but don't think (unintelligible) may be consulted, haven't been in on the preparation at least to get across their views and that is why there is such a difference here of opinion between our group from Northern California than there is in the group here.

I think the thing has become somewhat serious in their regard in the last few months and that is the time that I came into it so I do not claim to have the background on all of these hearings that have gone on for the past few years that some of these gentlemen have. Al Knorp and others that I have talked to, I know, have worked seriously and

conscientiously on the matter, but we are still miles apart. Mr. Samuels of the Northern California Material Dealers Association has prepared a statement here and in the interest of time, because I know how short your time is, I am going to read that statement to you and I think he will present you with exactly the same thing, which as far as I'm concerned, he may do now and then I'll ask Mr. Zelmer to make a suggestion also to you on his idea of a Notice Bill and then Mr. Elsback would just like to take a moment to present to you gentlemen a study of the cost of this thing on the part of the materialmen.

He's made a pilot study running over a period of about a month or more to see what this notice bill, if passed, would cost the materialmen. Frankly, using a somewhat fresh expression, the Notice Bill—we kind of feel that the monkey is on the wrong back. We figure that the monkey ought to be over on the other back, of the contractors or the owners that initiate this thing and not the legitimate materialmen who are going to be put to a considerable expense. I'll read this hurriedly for you gentlemen, then leave it so it will be incorporated into the record in toto, if it may be.

“To all members of the Senate Interim Judiciary Committee: Referring to the notice of materialmen bill, Exhibit D, I believe it is called in your records, it appears that we have progressed to the point of orderly confusion. There seems to be a groping for the solution by approaching the problem from the result instead of the source. The tail never successfully wags the dog. I refer to the transcript of the industry meeting to discuss proposed changes in the Mechanics' Lien Law held in Room 414, Capitol Building, Sacramento, May 12, 1958. It was unfortunate that the Senate Interim Judiciary Committee was not present. However, it was our understanding the transcript was taken for the benefit of this committee and would be considered in future hearings. Referring to pages 5 and 8 of the transcript, I wish to call attention to the purpose of the meeting as stated by Mr. John A. Bohn, page 5, quote, “However, the basic problem of the general protection of the public on this question has received a lot of consideration in the past and there are some who feel that it has not been solved” end of quote. Page 8, quote, “I will say that starting with that grand jury investigation, from time to time different groups have approached the Legislature strictly in times of declining economics or whatever it might be, when a home owner loses his home or when a large subdivision goes haywire. The whole impact of the Mechanics' Lien Law becomes apparent and people begin to wonder what sort of a situation this is where the owner pays twice for the same work or loses his property” end of quote.

These statements reflect the tenor of the entire opening remarks and I believe state in very common language that it is the purpose of these meetings to present legislation to protect John Q. Public from unscrupulous contractors of every classification. Referring to Page 12, testimony by Mr. Ken Ross, referring to the Legislative Counsel Request No. 1121, Notice Bill. “We do not think that it solves our problem, but we do believe that it is a major step in the right direction towards the solution of our problem. I think our problem could be very simply stated in that as general contractors in addition to having the desire to protect the public we have a very definite concern over the

problem of double payments and we are hoping that this will go a long way in the direction towards eliminating double payments", end of quote. As to Ken's remark, double payments by the contractor, I believe Mr. Ross indicates what he refers to as our problem is not the specific problem of the public. Referring to page 43 Mr. Ross referring to the Building Permit Bill, Exhibit C, now revised, "Our chapter has met and generally reviewed this proposal by the San Jose Building Material Dealers Association and we agree substantially with what we believe they are trying to accomplish here, but certainly the owner should be made aware of his lien rights and probably would generally support a bill of this nature.

We think it could be done quite easily by perhaps printing on the back of the permit the various elements of the lien law which affect them and point out their rights under the law, but we would like to point this out particularly under subsection 4 of your proposal. We feel that it gives some help to the owner, relatively little help, but some help to the owner and the help that it does give he certainly should have and we would go along with it, but it does absolutely nothing for the general contractor. In fact, in its present form I assume that it would be unconstitutional because it requires a list of materialmen and subcontractors here from the general contractor when he has no knowledge of the materialmen and sub-subs that he's dealing with. This, of course, is the basic issue that we are trying to get at in our whole proposal here and that is to determine who materialmen are and sub-subs are when the subcontractor with whom we are dealing do not wish to divulge this information to us so any law that the Legislature would pass requiring general contractors to give to the owner a list of materialmen and subcontractors who are on the job would be completely ineffective inasmuch as the general contractor has no way of determining who these people are. And that, in effect, is the very thing we are trying to determine by our bill." (End of quote.)

Closing portions of the statement and "that in effect is the very thing we are trying to determine by our bill" determines beyond a doubt that the principal issue is that the bill is entirely for the benefit of the contractors and incidentally for the public. I refer to page 44, testimony of Al Knorp, "If we could just pick up the phone and call Pacific Coast Aggregates there would be no need for this, but there are material dealers we can't dig out, we don't know who they are, that's why we want to know. This situation doesn't hold in Northern California in nearly the proportion that it does in Southern California. I think you might recall a hearing, Mr. Bohn, in Santa Barbara, a dealer who had made a career of trying to find out who a plumbing contractor was and a supplier was hiding this information, that's the reason we're here. It's not the gentlemen like you who will answer us and who deal aboveboard. We're trying to get the materialmen in the South who are covering their trail and covering it pretty cleverly." I do not think there is any question about the intent in this testimony. A bill is desired to protect the contractor, whether or not any benefits accrue to the public.

I refer to page 50, testimony of Walter Keusder, if I pronounce his name correctly, "But in the last couple of years it has cost our company

several thousand dollars to pay claims that otherwise would have gone to lien against subcontractors from suppliers that we never even heard of and couldn't find out about. In some instances they are subcontractors of subcontractors and in one or two cases we've been able to recover from the subcontractor, but a plasterer, we'll say, buys most of his material from a certain source, but his credit is getting a little shaky, they are about ready to close down on him so he goes to some other source; he doesn't tell us about the other source. We think we have releases from his suppliers and all of a sudden we wake up after we've paid him off. We paid third party claims in the plumbing field from plumbing contractors who assured us that this was where they bought their material. We get releases from them and then at the last minute we have a request for payment from third parties whom we've never heard of, that he hasn't told us about."

This statement is in very plain language and it is again a request for a bill for the benefit of the contractor with no provisions stated regarding benefits to the public. These facts are not intended to embarrass anyone; they are presented in the spirit of co-operation and to point out the notice by the materialmen bill is not a mission accomplished. All through this transcript we have three themes. One, there should be legislation to protect the general contractors from unknown third party claims; two, the subcontractors are the cause of third party claims; three, the materialmen's claims are the result, not the cause. We as materialmen in Northern California believe that if a chaotic condition develops in a segment of the industry, that legislation should be directed to the source of the chaotic condition. We made suggestions and recommendations at the May 12 meeting, but purposely avoided a direct introduction of legislation affecting a segment of the construction industry believing that they should clean their own house. Apparently, we cannot continue this policy, because if we do it is quite apparent that other segments of the construction industry intend to place the burden of responsibility on the materialmen. The monkey should not be placed on the backs of the result, but on the cause. We previously suggested this type of bill, now we present—

SENATOR DÖLWIG: Pardon me, Mr. Chairman, may I interrupt you here? Could you elaborate on this point as to the result and not the cause?

MR. COTTRELL: Yes, I think Exhibit A will tell you where it is.

SENATOR GRUNSKY: Incidentally, you are getting in now to your proposal, are you not, Mr. Cottrell, of a bill to be substituted in place of the—

MR. COTTRELL: Yes, that's right, that's exactly where we are, putting the notice of responsibility over on the contractor; he is with the subcontractor.

SENATOR GRUNSKY: Well, I am wondering if time is going to permit us to get into a presentation and general discussion of an entirely different bill in concept. We want it for the records and the report of the committee—

MR. COTTRELL: Well, there would be a notice bill putting the notice over on the contractor, exactly where—

SENATOR GRUNSKY: Yes, well rather than have you read the bill and explain each of its provisions, which embarks us upon a lengthy

diversion here, I respectfully ask that you let us incorporate this in the report and—

MR. COTTRELL: If you will incorporate the entire thing then, gentlemen, I'll go along with you on deference to time. I'd like to say this much, you are considering one type of notice bill and the other type of notice bill is the demand that they could make upon these subs to furnish them with the name of suppliers, which we think would be helpful. There is one thing that I would like to do. We have another type of notice bill that we did want to present to you that is included in here also whereby it is connected with the building permit, that in line with that we will not present. Mr. Elsback is here and he made a study on the cost based on materialmen. It won't take him more than two or three minutes to present it.

SENATOR GRUNSKY: Oh, we will be glad to have that. Senator Dolwig, did you want to extend your question? In other words, I would rather have the witness paraphrase the distinction which he is drawing; I was simply cutting him off, and I trust the committee approves, of going into a three- or four-page reading of a new bill, but Senator Dolwig, did you want to clarify your point further?

SENATOR DOLWIG: No, I think that Mr. Cottrell could just explain the difference between the proposed bill and this proposal so —

SENATOR GRUNSKY: In principle.

MR. COTTRELL: In principle it permits the contractor to make a demand upon the subcontractor he is dealing with, to make a demand upon him to supply him the names of the materialmen who are furnishing the material on that job.

SENATOR DOLWIG: And in the event he does not do it is there any compulsion?

MR. COTTRELL: Yes. Well now we are getting into the details of the bill where we do take it all the way through, both making it a misdemeanor to fail to do it and also going further and jeopardizing his license.

SENATOR DOLWIG: Well, I have one other question. Do you feel, Mr. Cottrell, that this type of notice bill would give the general public more protection?

MR. COTTRELL: Well, of course, a lot of these industries could do a lot in themselves. Now, of course, who initiates the thing, it's initiating the job, it's the owner and the building contractor. We have one bill here where we are going to try to make the issuing authority, one suggestion allowing the issuing authority to send out, when he issues the permit, to then send to the owner named therein a statement as to what his lien rights are, what liens can do to him and then reciting that out in full, something like when you get your tax bill you get a notice bill back or something like that, we can make the issuing authority do it.

That would put him on notice and even go as far as to say if he still doesn't understand it why he better consult legal counsel, because it is advisable to do so to protect your interest. Now, of course, you get down to the question of philosophy of government, how far should we go, are we going to assume that every homeowner and everybody else is just an imbecile and don't know anything and can't read or

write. If he is alerted to the dangers of the lien law by that notice should we go beyond that or should we saddle the whole thing on to the materialmen and get into a lot of economics. The credit and all this sort of stuff is based largely upon your lien rights and so forth and you start interrupting those and you get into trouble.

SENATOR GRUNSKY: Now, you had other —

MR. COTTRELL: Yes, if we can get Mr. Elsback to put on just what his study has been, I think —

SENATOR GRUNSKY: And then you want Mr. Zelmer to follow.

MR. COTTRELL: That notice bill that I talked to you about, if you could listen to Mr. Zelmer for one minute, I suggest.

SENATOR GRUNSKY: Yes, we will in a moment. Will you identify yourself for the record, sir, and proceed.

MR. ELSBACK: I am Kurt Elsback, living at 110 Castillian Way, San Mateo, representing the Building Material Dealers in Northern California, especially my own firm ———, Incorporated in South San Francisco of which I am credit manager as well as the secretary-treasurer.

Now, in reading this proposed bill we don't find only that the bill proposed to notify the contractor but a bill proposed too to notify the owner in order to put him on notice that he has furnished materials to him and that he might be subject to a lien. Now I have made a study of how this would involve our own firm. To give you a short picture, we are one of those middle-sized building materials firms with a concrete plant with about 12 or 14 building materials concrete trucks and furthermore, we furnish all kinds of building materials except lumber and hardware, so we are one of those dozens or even hundreds in this State of the same size and capacity.

In order to find out what this notification of owner would mean for us I have asked our dispatcher to give me some copies, photostat copies of three days of delivery just chosen at random, from our deliveries and I found in checking those that we have to notify the owner, that each day we have 11, and in the other one 12 and on the third 14 of these notifications to be made. It means an average of 12 notifications a day. Now in order to get these notices to the owner we have first to identify him, which we don't know, because the contractor does not give us the names of the owner, he only gives us the name of the jobs and we can, of course, easily identify the jobs because we are delivering our merchandise. However, in order to find out who the owner is, in order to notify him by registered or certified mail or personally you have to go to the different municipalities to find out from the records who the owner is. We are in a situation and a location where we not only serve one municipality, but about 12 different ones in addition to those which are not incorporated, where we have to go to our county seat in Redwood City, which is rather far away from us.

Now, in figuring out that to get those 12 notices a day we have to send a man out to these different municipalities and if I figure only 20 minutes a day we have 20 minutes of calls to find out, we have 4 hours a day only to employ a man in this capacity. Now I might mention that I believe that our firm and many others are very well organized as far as account work is concerned. We have electric accounting machines, we have radio communication between our trucks,

we have intercommunication with our dispatch tower, we have everything just to make the job as fast flowing as possible and to put the cost down. Now, in this case, where we have to identify the owner we can't do it with machines, we can't do it with organization, we just have to put a man to work with a car and to do legwork —

SENATOR DOLWIG: Pardon me, Mr. Elsbach, maybe I misunderstand; are you referring to the proposed bill here?

MR. ELSBACK: Yes.

SENATOR DOLWIG: Maybe I don't understand this, but it is my understanding on the basis of the presentation that has been made that maybe you can answer this question. Is it your understanding that the materialmen would have to send the notice every time he furnishes material on the job?

MR. ELSBACK: Not for every time, but at least for the first time we have to deliver a specific material to a specific job and that's why I made this study. Now I am of the opinion that——

SENATOR DOLWIG: Pardon me, I would like to get this clear in my own mind. Are you now saying that in order to protect yourself in the event that you're going to have to file a mechanics' lien that you are going to have to get all this information the first time that you deliver materials to a job?

MR. ELSBACK: Yes, because that's what the law says here.

SENATOR DOLWIG: That is your understanding?

MR. ELSBACK: That is my understanding, it is very clearly in the law though I have found that the representative of the other side don't——

SENATOR GRUNSKY: Just one moment. I think you have a preliminary, an early draft and not the current one, could we clarify that Mr. Bohn?

MR. BOHN: May I ask if you have the latest draft of this bill?

MR. ELSBACK: Yes, but even then I say it is the same.

MR. BOHN: As I understand this situation, this says that you may send a notice at any time after the delivery of materials, but the only mandatory provision is that you must do it within 15 days of the time you file the lien. The contemplation as I understand it, is that in a great bulk of cases your bills will be paid and there will be no necessity of sending this notice.

MR. ELSBACK: I don't think that would be the case, because 15 days before filing a lien means really 15 days after completion of the job, because I have only 30 days, if a notice has been filed, I don't know.

SENATOR GRUNSKY: Senator Dolwig, would you continue?

SENATOR DOLWIG: Yes, then it is my understanding, Mr. Elsbach, that you interpret this as a practical matter now in order to protect yourself in the event that later on you're going to have to file a lien that you must have all this information on every job that you're involved in, is that correct?

MR. ELSBACK: Yes, because that's what it says in——

SENATOR DOLWIG: Well, I think, Mr. Chairman, we ought to get it clarified because——

SENATOR GRUNSKY: Yes, just so we are clarified, for the record, we can't always be sure that we will clarify the witness' mind, but as

long as we understand it, that's sufficient, though we hope that we are giving you every opportunity to understand just what is before us. Does everyone on the committee have this distinction clarified?

MR. ELSBACK: May I ask a question, what it means that we have to cause to be given notice as prescribed to the owner, it says here verbally to the owner. So I think—

MR. BOHN: I'll just be a moment or two and perhaps we can clarify this. The bill which is before the committee now provides that the notice must be given to the owner as well as to the general contractor, I think that's clear. The question which Senator Dolwig raised is, would you find it as a practical necessity to give a notice to every owner whether or not there was a danger of your having to file a lien? In other words, the bill as it is now before the committee and perhaps I had better read the exact language so we will all be talking about the same thing. The bill now before the committee says, "The notice may be sent at any time after the labor, services, equipment or materials are furnished, but in no event later than 15 days prior to the actual filing of a mechanics' lien." It goes on to say, "If no notice of completion is filed, notice shall be given not later than 35 days after the date of completion as defined in Section 1193 of the code." Has that been taken out too?

SENATOR GRUNSKY: That's a little bit of our problem, everyone is apparently not looking at the most recent draft, which is a one page apparently mimeographed or multigraphed copy.

MR. BOHN: Do you have a copy of this mimeographed form?

MR. ELSBACK: No, that is the first time that I see it.

SENATOR DOLWIG: As chairman of the subcommittee we've had four meetings during the last session, we've had four meetings in the interim now and the original bill, Mr. Elsback, as I remember the thing, would have required materialmen to give notice for every material or every piece of material that they delivered to the job. The committee listened to certain facts that were presented and on the basis of those facts as they were presented, the committee determined that that would be too burdensome on the materialmen. Then, you see, we suggested that all the people involved in this problem then get together and see whether they couldn't find some other solution and just so we know where we stand at the present time, this is the latest proposal that has been made as you understood, this morning.

Now, if it is your interpretation that under this proposal it would be incumbent upon the materialmen, as a practical matter, to protect his rights in the event that later on he may have to file a mechanics' lien, that he must give notice in every case, of every piece of material that is furnished to the job, then we haven't made any progress. That is the thing, Mr. Chairman, that I think should be clarified.

MR. ELSBACK: That, of course, is an entirely different situation and this change was not presented to us.

SENATOR GRUNSKY: Well, then, if you will accept the apologies of the committee for our timing and distribution of some of this information, as you can see, it is beyond our control somewhat. But for the record then, may we understand that the principle and the sense of your opposition is that whatever legislation is adopted, whatever it

may be, that we must guard against making it expensive, cumbersome and burdensome for the materialmen, that is the sense of your opposition?

MR. ELSBACK: That is correct.

SENATOR GRUNSKY: All right, then, if we can so draft a bill or if this present draft eliminates that burden it would eliminate your expressed opposition?

MR. ELSBACK: It would substantially eliminate it, as far as my presentation was concerned. I don't know before really studying this here——

SENATOR GRUNSKY: We will give you every opportunity and trust that you will communicate by letter or otherwise with us after having an opportunity to read this, but I think we now have the sense in substance of your opposition and will be guided accordingly in whatever action we take as a committee.

MR. ELSBACK: That is correct.

SENATOR GRUNSKY: All right, thank you.

SENATOR BUSCH: I don't think it does eliminate his worry here, I think it would be necessary in order to protect — it looks to me like your objection is probably pretty well taken here in the light of the present language in the bill you have under consideration not that—— (noisy and unintelligible).

SENATOR GRUNSKY: Well, that's something that we as a committee are going to have to consider, but my point is we get the sense and substance of his objection then it will be for us to make a finding to determine the effect of the proposed legislation. With the approval of the committee, I do not want to endeavor here to get into a debate in an effort to resolve these differences of opinion, if we understand the sense of the objection then we can make our determination from there.

SENATOR DOLWIG: I feel much the same as Senator Busch and that is that if we have all the experts here in the field now and if this is a question we ought to at least find out from all of the people that are involved here as to their interpretation of it and then we can make up our minds. I would like to have some further opinions or some further facts on this to determine whether, as a practical matter, this would be necessary under the proposed legislation.

SENATOR GRUNSKY: Well, are the opponents in a position, having seen this draft only this morning, are they in a position to read it and express an opinion?

MR. COTTRELL: Well, to be honest with you, I've had it for five minutes so I'm not. I'm a good lawyer, but not that good.

SENATOR GRUNSKY: Well, that's what I am concerned about.

MR. ELSBACK: Well, I would like to say that I'm a good secretary-treasurer, but not that good (laughter).

SENATOR GRUNSKY: Will you do this then? Will each of you take this proposed draft, submitted this morning, back to your offices, carefully study, analyze it and submit to us a letter of analysis and opinion as to its effect upon you and whether it meets and eliminates any of your opposition? Will you do that?

MR. COTTRELL: Very well.

SENATOR GRUNSKY: All right. Now, Mr. Zelmer, could we have your comments?

MR. COTTRELL: While you're getting Mr. Zelmer up here could I ask Mr. Dean a question? He gave you some figures there for your record on lien laws and so many notices of completion being filed and so many liens. I was wondering if you had those broken down to the number of jobs involved?

MR. DEAN: No.

SENATOR GRUNSKY: The answer is "no."

MR. COTTRELL: I think that it is important to get that information there as to the — you might have all those liens filed on two jobs. I don't know, but I mean the total number of notices of completion and the total number of liens filed doesn't mean anything unless you get the number of jobs that went haywire. I think you ought to have that in your record.

SENATOR GRUNSKY: We will endeavor to do that.

MR. ZELMER: Mr. Chairman, Senators. My name is Austin Zelmer, I am credit manager of Central Supply Company and Granite Rock Company, a building material firm and rock quarrying firm in the Monterey Bay area. I also informally represent the Builders Exchange of Santa Cruz County. I am on the Legislative Committee of the Credit Managers Association of Northern and Central California, although I am not expressing their definite opinion on these matters at this time.

SENATOR GRUNSKY: Well, may I interrupt you, Mr. Zelmer, at this point. For our record, I have here a letter from the Santa Cruz County Builders Exchange, which you have referred to just now, have you not?

MR. ZELMER: Yes, sir.

SENATOR GRUNSKY: And signed by the president, Charles Wheat, which I will submit to be incorporated in the record, supplementing your remarks and expressing their position in this matter.

MR. ZELMER: Yes, sir.

SENATOR GRUNSKY: All right, then, would you continue?

MR. ZELMER: These are supplementing the remarks in that letter from the Santa Cruz Builders Exchange and this is the position we take. The proposed bill entitled, "An act to add Section 1193 to the Code of Civil Procedure, relating to mechanics' liens," appears to be an attempt to aid a limited number of persons in the building industry in a limited geographical area with a limited number of their normal business problems, and I am saying that because I am a credit manager and I associate with these problems each day. Namely, informing certain general contractors who the unknown sub-subcontractors are and who those sub-subcontractors are buying their material from. It makes no attempt to protect the interest of the man having a home built for his own occupancy, and this by admission of the opponents of the bill itself.

We believe that changes in the Mechanics' Lien Law, or for that matter, changes in any law in the statute books are matters for serious consideration. We do not believe that a law designed to help only a few people in an industry at the expense of the rest of those in the industry, is a good law. The Senate Interim Judiciary Committee is interested in providing a means to protect the man who is having a contractor build a house for him against the possibility of having to pay

twice. We heartily agree with this principle and have prepared a bill designed to do just that. And that bill, incidentally, is the enclosure in the material handed to you by Tom Samuels.

SENATOR GRUNSKY: All right, that has already been made a part of our records of today's proceedings.

MR. ZELMER: And marked Exhibit B. That's Exhibit C in this material handed out by Tom Samuels today. We heartily agree with this in principle and have prepared a bill designed to do just that. We would like to get this bill introduced. It provides a means of acquainting the prospective home builder with those particular sections of the Mechanics' Lien Law which affect his interests and the extent to which they may be affected. It informs him of what he may do to protect himself. The information is made available to him prior to commencement of the work of improvement by a source which would have no motive in concealing it. This in contrast with the Mechanics' Lien Notice Bill, which would, in most instances, merely put him on notice that certain subcontractors and materialmen had supplied his job after approximately 80 percent of the construction funds had already been paid to his general contractor.

Under the building permit type notice bill, Exhibit C, the home builder would be advised how to act to protect himself while still in possession of all of his building funds. We have heard it said, however, that in some instances the home builder might still disregard the information and advice and we recognize that it is difficult to enact legislation to protect those who, even though well advised, will not take the necessary precautions to protect their own interests. In this regard we would like to recommend a proposed bill which we believe originated in Southern California. We believe it is a good bill and have suggested only a few changes to make it more workable and practical. This bill certainly gets at the source of the problem, that that minority of persons engaged in the building industry who are deliberately dishonest and who cause the majority of the trouble. Since the Contractor's License Law is a part of the Business and Professions Code and as such is intended to maintain and encourage ethical practices among those engaged in the building profession, sufficient teeth should be put into the Contractor's License Law to discourage unethical practices. Diversion of funds with intent to defraud should be made a felony, subject to fine and imprisonment. Although it does not appear in the proposed bill, a paragraph could be added making it a criminal act for anyone to aid or abet the contractor in attempting to defraud the owner. This could be made to cover the dishonest subcontractor and the dishonest materialmen. It would be an error to consider expedient legislation such as the proposed Mechanics' Lien Notice Bill at this time.

We in the building industry should appoint those well qualified and competent persons within our industry from both the northern and southern part of the State to assist the Senate Interim Judiciary Committee in drafting legislation which would really clean house. At the informal meeting held in Sacramento on May 12 we were told this is what we should do. Those of us in the northern and central part of the State are quite willing to work together with others who see the problem differently. We can certainly do a better service for our State Senators and Assemblymen and for our own industry if we will work together

to accomplish the best solution to our problems. Perhaps I am late coming to you folks with this but as you know, there have been no hearings in the northern or central part of the State so far on these matters. It's rather difficult for us to get down here, it was our understanding at this informal meeting on May 12 that meetings would be held in the northern and central part of the State before any definite decisions were reached as to what legislation was to be recommended by the Senate Interim Judiciary Committee. I do have, which I can hand to you, this Exhibit B, being the bill which would put teeth in the Contractor's License Law.

SENATOR GRUNSKY: All right, we will make that a part of the record and incidentally, since we convened the two additional members of the committee, the distinguished gentlemen on my far right are Senator Ed Regan, who is chairman of the Senate Standing Committee, and Senator Stanley Arnold. Now, are there any questions of Mr. Zelmer?

MR. BOHN: I have a question, not necessarily on your presentation, but on general matters of policy and perhaps to review, if I can, just briefly, the basic problem with which the committee has been faced for so many years. We have had testimony to the effect that generally credit people in the construction field are not as careful as they should be about the credit of the contractors with whom they are doing business, the reason being that they have the lien law to rely upon. Now, I recognize a general statement of that sort is very difficult for you to answer, because I presume different firms have different policies, but would you like to comment on that?

MR. ZELMER: Yes, I would and may I get some notes I have in my briefcase. I think it would make it more brief and to the point.

SENATOR GRUNSKY: While Mr. Zelmer is getting this out can we have a show of hands of those men who wish to be heard in opposition? It appears to be one man—we will be able to find time then. All right, Mr. Zelmer.

MR. ZELMER: Perhaps this may help you bring out that point. I am speaking as a credit manager. Any change which would weaken the Mechanics' Lien Law would have a serious effect on the entire building industry, including the general contractors, subcontractors and materialmen. The ratio of capital investment to annual volume of business for the average general contractor exposes the subcontractor and materialmen to an abnormally great credit risk which can only be administered with reasonable safety by reason of the Mechanics' Lien Law.

Approximately one-half of the construction costs on a job are for labor, which must be paid each week; it is quite customary for the contractor to receive his payments in five equal 20 percent installments. Incidentally, I have reference to the normal type of home building by the contractor who is building the custom-built house. Three payments during the course of construction, one payment on completion and a fifth payment 35 days after completion. Because of these facts, it is unusual for a contractor to have sufficient working capital to pay for subcontracted services and material within the normal 30-day terms of sale. In most business enterprises the credit grantor can place a reasonable degree of dependence on the debtor's current assets, accounts receivable and merchandise inventory as a protection for his

account. Since all services and materials entering into a work of improvement to real property become a part of the realty itself the credit grantor has no recourse to the protection afforded by the usual classes of current assets. If it were not for the security offered by the Mechanics' Lien Law to the subcontractor and to the materialmen for the value of services or materials entering into a work of improvement this class of credit grantor would be obliged to drastically curtail credit terms or expose himself to losses so great as to substantially increase business failures among subcontractors and materialmen. Changes in the Mechanics' Lien Law which would hamper its effectiveness cannot do otherwise than have a very far-reaching effect on the entire credit structure of the building industry. For example, granting of credit to the many marginal general contractors now operating, would, of necessity, have to be sharply curtailed. Is that in line with what your question—?

MR. BOHN: Yes, that was exactly what I had in mind. We have heard the other side of the picture several times in previous hearings and that testimony amounts to this, that the homeowner is in an unusual position when he is dealing with the building of a home insofar as credit is concerned. He pays his bills, let us assume. A homeowner arranges for a loan, he has a contract and he fulfills his contract to the letter, however, by virtue of acts which are beyond his control, he is many times forced to pay for the same work twice or else stand the danger of losing his home. Now, it bothers them, it has been said that the material dealers and others extending credit are encouraged then to deal with irresponsible, not irresponsible, but with marginal contractors because they are really relying upon the lien of the home. Except, do you have any specific recommendations as to how this homeowner can be protected against something which his other business experience has not fitted him to anticipate? I mean this, the homeowner or the individual who goes to a department store or any other credit source and contracts for a bill, knows exactly what the amount of his bill is, he knows he'll have to pay it or run another risk, so whether he fails—he feels that he has completed a transaction. Now, in the case of the building of his home, that payment is not enough, he has to have some other skill or some other knowledge or some other technical help to be sure that he doesn't have to pay it again. Is that a fair statement of the problem?

MR. ZELMER: I believe it is. But did you include in that a question to me as to what he could do?

MR. BOHN: Yes, I did.

MR. ZELMER: The homeowner?

MR. BOHN: Yes.

MR. ZELMER: If I may, then, I would like to read this Exhibit C.

SENATOR GRUNSKY: Just give us the principle, in other words, the bill is in the record—paraphrase the principle as it will meet the point raised.

MR. ZELMER: First, it gives the homeowner information as to the salient features of the Mechanics' and Materialmen's Lien Law, which would affect his interests, notifies him as to what effect the Mechanics' Lien Law could and would have on him. Second, it makes suggestions to him and advises him as to what he can do to protect himself before

he releases any money or else he could handle it so that he handles disbursement of the money or has his banker handle disbursement of the money. He has means to do that.

MR. BOHN: Let me ask this question and I recognize that the chairman doesn't wish us to go too far into detail because this is a related bill, but I would like to ask this question. If the building contractors themselves say that there are mysteries in building of the sub-sub and the material dealers and so forth and they can't protect themselves with their trained business organizations, how could the average homeowner be expected to do so? For example, let's take the simple situation of a person, even yourself, who is very experienced in this field, or other persons who know about it. Short of hiring a certified public accountant and putting somebody out to investigate who furnishes each bit of materials, how could the homeowner, with full knowledge of the law, protect himself except by a bond?

MR. ZELMER: A bond is a good way, however, here in Southern California there is what is called the Builders Control Incorporated, which has come into Northern and Central California within the last few years and I believe they've handled perhaps five hundred million dollars' worth of work so they certainly have experience along that line. It is my understanding that in the course of their activities the homeowners and the lending institutions have not suffered any losses, that is one method of doing it.

MR. BOHN: What percentage do they charge for that service?

MR. ZELMER: About the same as a bond.

MR. BOHN: One percent?

MR. ZELMER: Well, I believe so, I am not sure of that, I think it runs higher than that. I think it's about $1\frac{1}{2}$ percent. However, there are in other places some of the building and loan institutions who are offering that service, some of the banks are offering it and there are some private organizations throughout parts of the State who are endeavoring to offer that service. Companies such as our own would be interested in helping to offer that service because we feel we do have a responsibility for the housecleaning of the problems in the building industry and we're certainly willing to recognize it and take our fair share of it, but we'd like to do it on a basis which we feel would be our fair share and not the unrelated share that is suggested by this Mechanics' Lien Notice Bill.

MR. BOHN: Just one further question, your suggestion of builders control, as I understand the way they work this, they simply receive the money from the loan, usually by direct payments for labor and material. The result thereby accomplished, in your view, would be that the money that the homeowner receives from the loan, whether it's adequate for the construction or not, at least will be paid directly to those who are ultimately entitled to it and if there is anything left over the contractor will get his profit. Is that substantially your view in the way it works?

MR. ZELMER: That is my understanding of the way it works except that they will go into it even further than that and they will satisfy themselves that there will be sufficient funds to complete the job before they will even undertake it. They will also supervise the job to the extent of making progress inspections during the course of construction

to satisfy themselves that the job is progressing properly and that the moneys requested are in relation to the work of progress in the job. They will make a complete analysis of the costs of the job to satisfy themselves that the job can be completed for the amount of the contract.

MR. BOHN: Then on a \$15,000 home that would cost the owner \$225 roughly.

MR. ZELMER: That is right.

SENATOR GRUNSKY: All right, next witness please and thank you Mr. Zelmer.

MR. SAMUELS: Mr. Chairman, Mr. Bohn, my name is Tom Samuels, manager of the Building Material Dealers Association of San Jose, also chairman of the legislative committee of the Bay area. I had not planned to testify here today, however, I became very interested in Mr. Bohn's leading question to Mr. Zelmer and then in his questions that followed. The question that interested me was that regarding the credit people, did he believe that credit people extended credit based on the lien laws. I think I can answer that because we issue credit reports for the construction industry and are very close to the credit people in the construction industry. To an extent I would say that credit is granted based upon liens, not as a primary right or not as a primary requisite to the extension of credit, but something way back there in the background to back them up. Actually, credit is based on good sound principles the same as it is in any other industry. I am speaking now for Northern California industry and I think that is recognized.

In the letter that was presented here by Mr. Cottrell today, I think that you will find that some of the people who are proponents of this bill were rather flattering in their remarks of the capabilities of the credit people in Northern California, I think that is particularly Al Knorp. Actually, in Santa Clara County our building permits will run about four to six million dollars per week. I think the average would be about 35 liens filed per week. Now of those liens filed, the 35 would relate to 35 jobs and they would also include all tax liens that are filed for that period of time. I would be very happy to supply this committee with a list of the liens from the actual record we keep in our office each month and I can show just exactly how many liens were filed, who they were filed against, the primary, the secondary liens and the tax liens.

SENATOR GRUNSKY: Thank you. Are there any questions?

MR. BOHN: May I just ask if you would furnish that information to the committee, as to the number of liens. Also, I think it would be helpful if you have any figures, or if you can get them, as to just how many of these result in ultimate loss to the owner and how many of them are disposed of by composition or by the materialman taking less than the full amount or whatever it might be.

MR. SAMUELS: For the record, I will get the actual figures for you as near as I can, but I will say and it is my considered opinion, that there would not be more than one case in three months where the owner is required to pay additional money over the original amount of the contract.

SENATOR GRUNSKY: Thank you.

SENATOR BUSCH: Mr. Chairman, I guess this concludes the opposition to this bill, is that right?

SENATOR GRUNSKY: Yes, all the people who desire to be heard have spoken in opposition. Is there anyone here who desires to make a presentation in opposition to the proposed legislation?

SENATOR BUSCH: Well, I would like to know at this time if possible, what Mr. McGilvray and Mr. Ross think about this proposal as set forth in Exhibit C here which would require any city or county that issues permits to notify the owner who is going to build a house that he has certain rights.

SENATOR GRUNSKY: All right, Mr. McGilvray, do you wish to speak in answer to that?

MR. MCGILVRAY: I had something on a little matter I could speak to — I could only say that we have not considered the bill, but I could not speak for our people. I think we've seen the bill before; in fact it was entered last time, but we have taken no issue on it. I suppose we wouldn't even care. Personally, I cannot see any objection to the bill. It doesn't accomplish what this bill does.

SENATOR BUSCH: Well, would it help a little bit though?

MR. MCGILVRAY: It might help a little bit, but I think I said before at another committee meeting that it's sort of like closing the barn door after the horse is gone. They've already signed the contract; it might be of some assistance. Once they've signed the contract then they're in. It would not probably hurt. I don't know. Ken, what do you think?

MR. ROSS: I think our position is pretty much the same. I haven't read the bill actually. I think probably there is little new that we haven't heard at previous sessions of the committee. Of the various proposals presented, however, we have always contended that we would support a strengthening of our license laws. On the other hand, the marginal contractor who is involved here usually doesn't care too much about losing his license anyway, he's broke, he's going out of business and that isn't a major concern to him, so we certainly would support a strengthening of the, but it doesn't solve the problem. As far as bonds are concerned, the bulk of the work done by our people, who are principally large contractors, is bonded. We hesitate to support mandatory bond legislation. On the other hand, we do not feel that it would be particularly harmful to our contract.

SENATOR DOLWIG: I have a point of clarification, Mr. Chairman.

SENATOR GRUNSKY: Just one moment before we get into that, Senator Dolwig. I have a letter here on the Mechanics' Lien Notice Bill from a Mr. Smedegaard. He apparently is writing in opposition. His firm does a great deal of mechanics' lien work in Orange County, and it is his opinion that many of their clients feel that any legislation similar to that heretofore proposed would create a tremendous burden upon the industry as a whole causing a considerable confusion, and then he goes on to elaborate. This is one then that I think properly should be made a part of the record.

November 25, 1958

SENATOR DONALD L. GRUNSKY, *Chairman*
Interim Judiciary Committee
130 Rodgers Avenue
Watsonville, California

Re: Mechanic's Lien Notice Bill, scheduled for 9.30 o'clock a.m., December 4, 1958.

DEAR SIR: We assume from the title of the above named bill that this constitutes one or more of such types of bills proposed in the last legislature. Our firm does a great deal of mechanic's lien work in Orange County, and it is our opinion and that of many of our clients that any legislation similar to that heretofore proposed would create a tremendous burden upon the industry as a whole, cause considerable confusion, and produce very few benefits.

We have urged that legislation be passed providing that surety bonds posted on subdivisions run to the contractors performing the on-site improvements, as well as to the city or county involved in order to eliminate the situation which frequently arises of the streets being accepted and the bond exonerated when the contractor is not paid.

Many of our clients are in the construction business, and they are each and all opposed to this bill. It is our opinion that their objections are valid, and we will attempt to briefly state the reasons for our objecting to this bill. In the first place, we all know it is impossible to legislate morality, integrity, or credit responsibility which will have any material affect on the sharp operator who does not pay his bills.

In checking with several of our clients we find that there is probably only 1 percent to 2 percent of their total work in which they ever encounter mechanic lien difficulties. This means that any legislation placing a general requirement on the whole industry in 100 percent of all of their cases, merely to provide additional information in 1 percent to 2 percent of the cases, hardly seems fair.

We have heard the occasional cry of the general contractor who states that he has in the past been forced to pay twice for labor or materials because an irresponsible subcontractor failed to pay his bills. On the face of it this sounds like something legitimate which should be remedied. However, on analysis, it appears that in almost every case the general contractor who has raised the cry is one who prefers to save a very few dollars and gamble on an unknown or irresponsible subcontractor merely because the subcontractor submitted a bid a few dollars less than a reliable firm. After taking this gamble, then the contractor proceeds to hand out the money for the work without obtaining proper lien releases for labor and material. At this point of the construction, the contractor has not only gambled on an irresponsible subcontractor, but he has in addition failed to take the necessary precautions to protect himself against duplicate payments. When viewed in this light it appears very unjust to subject the entire industry to the carrying of the burden of perhaps providing some type of protection to the general contractor who has gambled and who has ignored ordinary precautions. In the case of the owner he can be protected by employing a reliable general contractor and requiring appropriate releases. If he does not wish to proceed in either of these safe grounds, he can have the job bonded, which gives the owner a third choice.

Sincerely yours,

N. H. SMEDEGAARD

SENATOR GRUNSKY: Mr. McGilvray, you had something in answer to a point raised by Senator Dolwig.

MR. ROSS: Mr. Chairman, may I make one comment first? I was getting out and I am not sure that I properly heard Senator Busch's question. I just want to make certain that I answered it properly.

SENATOR BUSCH: I was just wondering what your opinion was with regard to this proposed law which is set forth in Exhibit C of this statement that was discussed here this morning, which provides that any city or county that issues a permit for building a home must set forth in this permit information to the homeowner as to his rights relative to the Mechanics' Lien Law?

MR. ROSS: Yes, Senator, we have discussed this before. In fact, I believe before the subcommittee and we certainly would support such a

measure. We feel that it would have some value. On the other hand, that puts the owner in the same position that the contractor is already in. He knows the law and then what can he do about it, that's the problem. Our people know the law, the problem is one of determining who these potential claimants are.

SENATOR BUSCH: The homeowner generally does not know the law and this would help out.

MR. ROSS: That is right. This would help him know the law. We do not think it would help him at all or very slightly at least in attempting to determine who these potential third party claimants are that his contractor or subcontractors are not willing to divulge.

SENATOR GRUNSKY: Now, gentlemen of the committee, I don't want to get into an extended discussion here. On your behalf I say this, I don't know what we are going to be able to accomplish. What we intended under our proposed programing was that we would take decisive action at this hearing. Now obviously, instead of coming up with a reconciled position where everyone is in agreement we obviously have some definite opposition from the North and I am wondering if we're going to accomplish anything; we are just simply going to logjam the rest of our program on the agenda where I think we can take some decisive action on other matters. Now, would the members of the committee and Senator Regan, you may have the responsibility; I don't know if you're hearing me. As you know, the purpose of our interim committee, at least insofar as our intentions were concerned, was that we would endeavor to resolve as many issues as possible in order to lighten the burdens of the standing committee of which you may, depending on your wishes, be chairman at the next session. Now, what I am interested in knowing, from what you've heard here, do you think and do the members of this interim committee think that we can resolve anything today or is it a matter which is destined to be before the full standing committee for a full blown hearing. If so, there's no point in our extending our time here now on that. I would then suggest we get on with the agenda on these other matters where we might be able to take decisive action today.

SENATOR REGAN: As far as this act is concerned I think that the full committee in Sacramento will probably want to hear it again, but we don't want repetition up there either. I think there will have to be at least an hour's presentation before the committee.

SENATOR GRUNSKY: Well, I think my remarks carried the same implication and therefore there is no point in extending this hearing further on the subject today. We have the answer to the question we wanted, which was whether we could resolve anything. Is it then the consensus of the members of the interim committee who are here that we're not going to resolve this issue today and therefore we might as well defer final decision and further hearing for a properly scheduled hearing on a bill introduced at the next session of the Legislature?

MR. MCGILVRAY: I just wanted Mr. Hubbard, who probably might not get to Sacramento, to answer Senator Dolwig's question.

MR. MCGILVRAY: This is Mr. Hubbard of the Hayward Lumber Company of Los Angeles. I'll ask one question. Mr. Hubbard, you are credit manager for them?

MR. HUBBARD: Yes.

MR. MCGILVRAY: How many notices or the percentage of cases which you might have to send notices out on?

MR. HUBBARD: Less than 5 percent of the jobs that we furnish materials to would have to have a notice filed. This would give us 15 days in case a notice of completion is filed and 75 days in case a notice of completion is not filed, so it would be very, very little cost to give this notice.

SENATOR GRUNSKY: Now, for the members of those in the audience who are here on this bill, this concludes the discussion on it at this time. If you will wait a moment I want to clarify a point. Mr. Bohn, am I correct, there are no further scheduled meetings on this subject matter insofar as the interim committee is concerned?

MR. BOHN: That is correct.

SENATOR GRUNSKY: All right now, we have failed in our efforts to resolve the issue as an interim committee, however, I think we have substantially succeeded in bringing the matter together so that we have our teeth into something where we may come up with some remedial legislation, however, that will then be by the scheduling and calendaring of a regularly introduced bill such as we anticipate some one proponent or the opponents with their alternative plan will introduce in the Legislature and be scheduled for regular hearing before the standing committee in the normal and regular legislative process. So for the information of Mr. Zelmer and everyone else here there will be no meetings of the interim committee on this subject matter, however, it will be your responsibility to follow, watch and get notices from the standing committee when the subject matter comes up and you will then make your presentation before the full standing committee when the bill is heard. Now is there a complete understanding as to the status of this subject matter?

SENATOR GRUNSKY: Senator Coombs thought you should know that the standing committee, as most of you I think do know, meets once a week at times to be scheduled after the Legislature convenes. But as to the time when the particular bill will be heard you will have to notify the chairman of the standing committee, get on the mailing list for notices and you will then be advised when the particular legislation comes up.

MR. BOHN: May I say one more thing? Do all the opponents of this bill have copies of it now, the latest version?

SENATOR GRUNSKY: May we have your attention? Apparently there are some points to clarify on the subject matter which we have just concluded.

MR. BOHN: Just one. Do all the opponents of the bill or those who spoke in opposition to the bill now have copies of the latest version? If not, I suggest that Mr. Dean will make them available to you so that you may study them between now and the time that the bill comes up again.

MR. DEAN: Mr. Bohn, it is also incorporated in the material the San Jose people presented to you.

MR. BOHN: Thank you, and at this time at the request of Senator Grunsky, made earlier in this hearing, the following alternate proposals will be made part of the record on behalf of opponents of the notice bill.

SANTA CRUZ, CALIFORNIA
November 28, 1958

SENATE INTERIM JUDICIARY COMMITTEE
Hon. Donald L. Grunsky, Chairman
Lettunich Building
Watsonville, California

DEAR SENATOR GRUNSKY: Pursuant to the consensus expressed at a special meeting of the Builders Exchange held on Wednesday, November 26, we are writing to express our opposition to a Mechanics' Lien Notice Bill such as that in the enclosure herewith, which we have marked Exhibit "A," and we urge your consideration of our reasons for opposing the bill.

1. The proposed bill would serve little or no effective purpose if it is intended to protect the interests of the individual having a home built for his own occupancy.

2. To begin with, in the majority of instances in which a homeowner has had to pay more than his contracted price as the result of Mechanics' Liens, this situation has come about because the funds provided for the work of improvement have been diverted to other purposes.

3. It is customary for sums of money to be paid to the contractor in a series of equal payments as the work of construction progresses. A commonly used method is the five-payment plan. Under this plan, the contractor will have received four payments (or 80 percent of the construction money) by the time the job is completed. Since most subcontractors and materialmen will, as a matter of practice, refrain from sending a notice to an owner until sometime after the notice of completion has been recorded, the owner will not have knowledge of who has furnished materials and services on his job until after 80 percent of his money has been disbursed.

4. To continue with the above example, what will the homebuilder do about the remaining 20 percent of construction funds, assuming he has received notices from subcontractors and materialmen to the effect that they have furnished labor and/or materials in the work of improvement to his real property? I am sure most of us will agree that the average homebuilder has little or no knowledge of the Mechanics' Lien Law and how it may affect him. He doesn't know the subcontractors nor the materialmen. If he doesn't disregard the notices entirely he will, in all probability, ask his general contractor's advice as to what should be done. Again, if the homebuilder happens to be in the hands of an unscrupulous contractor, he will be advised to disregard the notices.

It is our understanding that the Senate Interim Judiciary Committee is quite serious in its intention to introduce legislation which will serve to protect the home builder. We are heartily in accord with this idea and we, therefore, ask that you give consideration to a proposed bill, copy of which is enclosed herewith and marked Exhibit "B."

1. This bill would provide a means of acquainting the prospective homebuilder with those particular sections of the Mechanics' Lien Law which affect his interests and the extent to which they may be affected.

2. It would further serve to inform him as to what he could do to protect his interests.

3. The information would be made available to him prior to commencement of the work of improvement, by a source which could be depended upon to furnish the information to him.

4. Even though the contract had been signed, the homebuilder would yet be in complete control of all building funds and would be in a position to seek competent legal or professional (for instance, his banker) advice before authorizing the disbursement of funds. He could still act in a way to protect himself.

We have heard it said that even with the necessary information in hand, in too many instances the homebuilder may not take the necessary steps to protect his interests. We concede that it is difficult to enact legislation to protect those who, even though well advised, will not do what is necessary to avail themselves of such protection. To the extent that this may be true, certainly the Mechanics' Lien Notice Bill would not protect them.

However, if the Senate Interim Judiciary Committee is indeed serious in its desire to protect the homebuilder, and we sincerely believe they are, the only way it can be done is to get at the source of the problem itself. In this regard, we ask your consideration of our Exhibit "C" for the reasons enumerated below:

1. The Contractors' License Law is a part of the Business and Professions Code. Among other things, it is the intent of the Business and Professions Code to main-

tain a high standard of honesty and fair dealing among those whose activities are regulated by this code and to encourage ethical practices among them.

2. Fortunately, the majority of the problems which cause the homebuilder to suffer financial loss occur as a result of the activities of a small minority of those engaged in the building industry.

3. Sufficient teeth should be put into the Contractors' License Law to discourage dishonest and unethical practices. Diversion of funds, with intent to defraud, should be made a felony, subject to fine and imprisonment.

4. When a family undertakes to build a home, it is, perhaps, the major financial investment of their lifetime. They are entitled to all reasonable safeguards and protection.

5. The building industry should be, and we believe is, cognizant of its responsibility to the community. We should do everything we can to encourage sound business practices within our industry. We should be willing to aid in policing our industry and to offer suggestions which will serve to accomplish that purpose.

For the reasons stated above, we urge your opposition to the Mechanics' Lien Notice Bill (Exhibit "A") and your active support of the proposed Building Permit Type of Notice (Exhibit "B"), and also an amendment to the Contractors' License Law (Exhibit "C") which would make it a felony for anyone, who, with intent to defraud, would retain or use construction funds for any purpose other than that for which they were intended.

Very truly yours,

SANTA CRUZ COUNTY BUILDERS EXCHANGE
By CHARLES I. WHEAT, Pres.

Exhibit "A"

(As revised at Del Coronado Hotel, October 7, 1958 by James Dean,
Ken McGilvray, Walter Keusder, Al Knorp and Harry Stewart, Ken Ross)

*An act to add Section 1193 to the Code of Civil Procedure,
relating to mechanic's liens.*

The people of the State of California do enact as follows:

SECTION 1. Section 1193 is added to the Code of Civil Procedure, to read:

1193. (a) Except one under contract with the owner or one performing actual labor for wages, every person who furnishes labor, services or material for which a lien otherwise can be claimed under this chapter, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given written notice as prescribed by this section, to the owner, and, unless such person is under contract to the original contractor, such person must also cause to be given such notice to the original contractor. The notice shall contain a general description of the labor, service, equipment or materials furnished, the name and address of such person furnishing such labor, services, equipment or materials, and the name of the agent, if any, who contracted for purchase of such labor, services, equipment or materials. If an invoice for such materials contains this information a copy of such invoice, transmitted in the manner prescribed by this section, shall be sufficient notice. The notice may be sent at any time after the labor, services, equipment or materials are furnished, but in no event later than fifteen (15) days prior to the actual filing of a mechanic's lien. If no notice of completion is filed, notice shall be given not later than thirty-five (35) days after the date of completion as defined in Section 1193.1(d) of this code.

(b) Any agreement made or entered into by an owner whereby the owner agrees to waive the rights or privileges conferred upon him by this section shall be void and of no effect.

(c) Service of notice required under this section may be given by delivering the same to the person to be notified, personally, or by leaving it at his address or place of business with some person in charge, or by registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given, at the address shown by the building permit on file with the authority issuing a building permit for the work. If no building permit has been issued or if the building permit does not contain the address of the person on whom notice was required to be served under this section, then service of such notice shall be by certified or registered mail addressed to the jobsite with the envelope containing the name of the owner, if known, or if not known, then merely "Owner," or to the original

contractor, if known, or if not known, then to "General Contractor." When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

Exhibit "B"

Any public or governmental body or agency having the right or authority to issue permits or approval for a work of improvement, as defined in Section 1182 of the Code of Civil Procedure, shall be required to send notice in writing to the owner of the property to be improved at the time such permit is issued or approval granted, said notice to be sent to the address of the owner as shown in the building permit. The notice shall, in general, contain the following statements:

1. That all materials used and services performed in the work of improvement become a lien on the property as provided in the Mechanic's Lien Law until paid or until the time within which to file claims of lien shall lapse.

2. That the owner of the property to be improved may require the general contractor and/or subcontractors to furnish a bond with good and sufficient sureties, as provided in Section 1185.1 of the Code of Civil Procedure.

3. That the owner of the property to be improved may require a waiver of lien rights from the general contractor, subcontractors and materialmen and laborers for services performed and/or materials supplied at the time payment is made for such services and/or materials.

4. That the owner of the property being improved may demand, and the general contractor shall be required to furnish, a list of the name and addresses of all the subcontractors and/or materialmen furnishing services and/or materials in the work of improvement, where such services or materials to be furnished by any one subcontractor or materialman will in the aggregate amount to more than \$200.

5. That the owner be advised to seek competent legal or professional advice to protect his interests.

Exhibit "C"

Code of Civil Procedure

1185.1(e). In case a bond is not filed as provided for in 1185.1(c), then the agent must hold money received by him for a particular work of improvement to real property in trust and as bailee, maintaining adequate books and records to account for the receipt and subsequent disbursement of funds on every job.

(a) All funds paid by the owner to a contractor, or by the owner or contractor to a subcontractor, shall be in trust and as bailee, for the benefit of the owners, contractors, laborers, subcontractors or materialmen, and the said contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes.

(b) Any contractor or subcontractor engaged in the building construction business who, with intent to defraud, shall retain or use the proceeds or any part thereof, of any payment made to him, for any other purpose than to first pay laborers, subcontractors, and materialmen, engaged by him to perform labor or furnish material for a particular work of improvement, shall be guilty of felony in appropriating such funds to his own use, or in diverting same to another work of improvement than that for which such funds were intended while any amount for which he may be liable or become liable under the terms of his contract for such labor or material remains unpaid, and may be prosecuted upon the complaint of any person so defrauded, and, upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) and/or not less than six months nor more than three years imprisonment in a state prison at the discretion of the court.

(c) The appropriation or diversion, by a contractor, or any subcontractor, of any moneys paid to him for building operations on a particular work of improvement to real property before the payment by him of all moneys due or so to become due laborers, subcontractors, materialmen, or others entitled to payment for such particular work of improvement shall be evidence of intent to defraud.

Exhibit "A"

An act to add Section 7032 to Chapter 9, Division 3, of the Business and Professions Code.

The people of the State of California do enact as follows:

Section 7032 is added to the Business and Professions Code, Chapter 9, Division 3, to read:

7032. Every subcontractor under contract with a prime contractor and every subcontractor under contract with a subcontractor for construction or the furnishing of services, equipment or materials for which a lien otherwise can be claimed, shall upon written request of either the prime contractor or subcontractor, cause to be given written notice as prescribed by this action to the prime contractor and the subcontractor.

(A) The notice shall contain the name and current business address of each supplier who will supply service, equipment, or material or labor contract.

(B) Unless otherwise requested in writing by the prime contractor or subcontractor; the subcontractor may delete the name and address of any supplier wherein purchases at cost value to the subcontractor will in the aggregate total less than \$100 each bid, estimate or contract.

(C) Said notice shall be furnished within 15 days after the commencement of work by the subcontractor.

(D) The subcontractor may certify that materials to be used for construction have been purchased lien free and are "in stock" materials and that no lien rights apply between the subcontractor and the subcontractors' supplier.

(E) A subcontractor may substitute suppliers of service, equipment or material and may purchase services, equipment or material from other than those previously included in the notice; however, if the subcontractor substitutes a supplier the subcontractor shall notify the prime contractor and subcontractor, if any, within 15 days after said purchase in the manner prescribed in this section.

(F) The listing of labor shall be exempt from the provisions of this notice except wherein a contract is entered into to supply only labor.

(G) Service of notice required under this section may be given by including the information with the estimate, bid or contract or by leaving it at the contractor's place of business, acknowledged in writing by some person in charge or by registered or certified mail, postage prepaid, addressed to the person to whom notice is to be made. When service is by registered or certified mail, service is complete at the time of deposit of the registered or certified mail.

(H) Each violation of this section shall be a misdemeanor and constitute a separate cause for disciplinary action.

Exhibit "B"

An act to add Section 7071.5 to Chapter 9, Division 3, of the Business and Professions Code.

The people of the State of California do enact as follows:

Section 7071.5 is added to the Business and Professions Code, Chapter 9, Division 3, to read:

7071.5. Every applicant for license under the provisions of this chapter shall file with the registrar, as a prerequisite to the issuance of a license to such applicant, a bond issued by a surety authorized to issue bonds as surety under the laws of the State of California in the sum of \$10,000, running to the State of California. The bond so given shall provide that in the event of default in any of the provisions of the Contractor's Licensing Act, the principal sum of said bond shall be made available to claimants against the contractor in the following order of priority:

(a) To the owner of the property who has paid lien claims filed against his property over and above his contractual obligations with the contractor.

(b) To any contractor who has paid any amount in excess of his contract obligation by reason of a lien filed against the owner's property.

Referring to our Exhibit "B," a bill to bond contractors of all classifications. The legislation to bond contractors has been proposed from time to time, legislation to create trust funds and provide penalties for

violations have also been proposed from time to time. In fact, Assemblyman Hanna's current proposals can be listed in this category.

This bill provides "Every applicant for license under the provisions of this chapter shall file with the registrar, as a prerequisite to the issuance of a license to such applicant, a bond issued by a surety authorized to issue bonds as surety under the laws of the State of California in the sum of \$10,000, running to the State of California. The bond so given shall provide that in the event of default in any of the provisions of the Contractor's Licensing Act, the principal sum of said bond shall be made available to claimants against the contractor in the following order of priority:

"(a) To the owner of the property who has paid lien claims filed against his property over and above his contractual obligations with the contractor.

"(b) To any contractor who has paid any amount in excess of his contract obligation by reason of a lien filed against the owner's property."

1. This type of bond is popular with the State of California.

(a) The Board of Equalization requires a bond in most cases before issuing a sales tax permit.

(b) Collection agencies are bonded to the State of California as a prerequisite to obtaining their collection agency licenses.

(c) Section 7071.5 of the Business and Professions Code relating to construction provides for this type of bond under certain conditions.

2. It will tend to restrict contractors of all classifications with less than ordinary responsibility, integrity and honesty.

3. It is beneficial to the public as well as legitimate contractors.

4. Some trade associations recognize the need for this type of bond and require a bond as a prerequisite to membership in their organizations.

5. The cost of this type of bond is nominal.

6. It does not restrict a contractor as to the scope of his operations because bond capacity is only considered once, at the time the bond is issued and in the original amount.

7. This bill relieves the bonding company of the embarrassing possibility of being accused of controlling the building industry.

8. Only one bond per year is required for this purpose.

9. The bill establishes the order of priority of the beneficiaries and protects first, Mr. John Q. Public.

We present Exhibit "C," the "Building Permit Type of Notice."

Exhibit "C"

An act to add Section _____ to the Code of Civil Procedure relating to mechanics' liens.

The people of the State of California do enact as follows:

SECTION 1. Section _____ is added to the Code of Civil Procedure, to read: _____ Any agency of this State or any county, municipality, district, political subdivision, or any public or governmental body in this State, having the right or authority to issue permits or approval for a work improvement, as defined in Section 1182 of the Code of Civil Procedure, shall, within five days after issuing any permit or approval for work of improvement and shall specifically contain the following information:

(1) That your property is subject to lien for the reasonable value or agreed cost of all materials furnished or services performed for the contemplated work

of improvement. This right to lien for said materials or services continues until 30 days after notice of completion has been filed unless the materials or services are paid for by you or your contractor prior to that time.

(2) That you, as the owner of the property upon which the work of improvement is to be performed, may require the general contractor and his subcontractors to furnish a bond or bonds, with good and sufficient sureties, as provided in Section 1185.1 of the Code of Civil Procedure.

(3) That you, as the owner of the property upon which the work of improvement is to be performed, have the right to demand a waiver of lien rights from the general contractor, subcontractors, materialmen and laborers for services performed or materials supplied at the time payment is made for such services or materials by you as the owner or by any contractor or subcontractor.

(4) That you, as the owner of the property upon which the work of improvement is to be performed, may demand of the general contractor, and said general contractor shall be required to furnish, a list of the names and addresses of all of the subcontractors, materialmen and laborers furnishing services, labor, or materials in the construction of the work of improvement where such services or materials to be furnished by any one subcontractor, materialman or laborer exceed in the aggregate the sum of \$200.

(5) It is important that you, as the owner, understand fully and completely the rights of contractors and subcontractors furnishing materials, services and labor to the construction of the work of improvement on your property under the mechanics' lien laws of the State of California. In the event there is any doubt or confusion in your mind about these rights, you should seek competent legal or professional advice at the outset of the project.

There were two objections to this type of bill expressed in Sacramento:

1. That the owner was not notified until after the contract has been let. This is hardly a legitimate reason for not advising the public when you consider that most contractors are honest and that if the notice originated too far in advance of the building permit, substantially less houses will be built on an owner-contractor basis. The owners would be discouraged before they began.

2. That the contractor did not know who the material suppliers to the subs were and could not fulfill this section of the bill.

Referring to our Exhibit "A" the notice by subcontractor's bill the contractor will have the advantage of knowing who the suppliers to the subs will be.

(a) This notice bill which is a constructive approach to the problem of protecting the rights and interests of the general public at the time they become homebuilders.

The prospective homeowner is in the habit of buying necessities and a few luxuries, including the family car. He is accustomed to purchasing on open book account and conditional sales contract and naturally believes that all merchandise purchased is free and clear of encumbrances except as to the amount of the purchase price made known to him at the time of purchase. It is only logical to assume that he is unaware of the Mechanics' Lien Law and he has every reason to believe that the purchase of material and labor for his residence are the responsibility of the contractor and not the responsibility of the owner.

(b) The building permit type of notice makes no attempt to amend or alter the present Mechanics' Lien Law in any manner.

(c) It provides a means of getting essential information into the hands of homebuilders which will inform them of the fact that the materials and services going into the work of improvement to his prop-

erty constitutes a lien on the property in accordance with the terms and conditions of the Mechanics' Lien Law.

(d) It advises him what he can and should do to protect his interests.

(e) The homeowner gets timely notice at the commencement of construction from a source which can be depended on to give him accurate information and sound advice; namely, the building permit itself issued by the building permit office.

One of the original drafts of a building permit bill included that building permits be issued only to the owner. It may well be considered as an alternative.

b. SUBSEQUENT ACTION ON THE PROPOSAL

Since this report was not printed until after the close of the 1959 Legislative Session it can be reported that Senate Bill 814 (An act to add Section 1193 to the Code of Civil Procedure, relating to mechanics' liens) was passed and approved by the Governor on July 17, 1959. The bill is fully reported in the report of the Standing Committee on Judiciary (Part II of this report).

B. SECURED TRANSACTIONS IN PERSONAL PROPERTY

1. INTRODUCTION

SENATE BILL 1402 (1957 Session)

This bill relates to the creation and enforcement of security interests in personal property. It was introduced at the 1957 Session, but it was of such a comprehensive nature that the authors suggested that it be referred for interim study.

Beginning in January 1958, hearings were held by both the Full Senate Interim Judiciary Committee and the Subcommittee on Civil Code, Civil Actions and Civil Procedure (a subcommittee of the full committee). A complete report of these hearings is contained in the following material, indicating proponents and opponents of the measure.

Following the full hearing in January 1958, a revised version of this bill was prepared by the California Bankers Association and presented to the subcommittee at the hearing on September 4, 1958. This revised version is the only one which will be incorporated in full in this report in the interests of brevity and also because it was the version considered thereafter.

Senate Bill 1402 (1957 Session), as revised, is set forth in full as follows:

Proposed statute on secured transactions in personal property, being a revision of Senate Bill 1402, introduced in the 1957 Session of the California Legislature, adding Division Fifth to the Civil Code.

INTRODUCTION

In 1944 the National Conference of Commissioners on Uniform State Laws and the American Law Institute began the preparation of the Uniform Commercial Code. The first official draft was published in 1952, following which it was enacted in Pennsylvania effective July 1, 1954. It has since then been enacted in a somewhat revised form in Massachusetts and Kentucky.

In the code an attempt is made to embody in one uniform act most of the statutory law governing commercial transactions, including the law of sales, negotiable instruments, letters of credit, transfer of securities, bulk sales, bills of lading and warehouse receipts, bank deposits and collections, and lastly, all types of secured transactions involving personal property.

Much of the code deals with subjects already covered by uniform acts promulgated by the Commissioners on Uniform State Laws during the last 50 years.

Article 9 of the code, however, presents the first comprehensive and uniform treatment of the entire field of lending and other transactions on the security of tangible and intangible personal property. It meets a real need not only by giving promise of some measure of uniformity as between the laws of the various states but by bringing the statutory law more in tune with modern commercial practices in this important field.

The attempt during the last 30 years to meet the needs of modern nationwide commercial financing and consumer credit under our nineteenth century statutes and rules governing nonpossessory liens has resulted in a patchwork of statutes and amendments which only a lawyer specializing in this field can hope to comprehend.

The New York Law Revision Commission, which made an exhaustive study of the entire code, says of Article 9 in its report:

"It reduces to a minimum the formalities required for creating a security interest and protecting it against third parties. It simplifies the entire law of personal

property security to a very great extent by eliminating inconsistencies and providing specific rules in cases where the law is now complex and plagued with uncertainty."

In 1955 the California Bankers Association, through a number of committees under the chairmanship of Mr. B. C. Corlett of the American Trust Company, made a painstaking study of the code. As a result of this study it was concluded that Article 9 presented the basis for a workable and desirable statute covering all forms of lending on the security of personal property. It then asked a special committee composed of Mr. Edwin H. Corbin, Vice President of the Security-First National Bank of Los Angeles, Mr. Joseph F. Hogan, Vice President of the Crocker-Anglo National Bank, Mr. Kenneth M. Johnson, Vice President of the Bank of America, and Mr. Edward D. Landels, Counsel to the California Bankers Association, to make a further study of Article 9 and prepare a draft which could be offered for enactment in California as a separate statute. In this work this committee had the benefit of the advice and counsel of George R. Richter, Jr., Esq., one of California's Commissioners on Uniform State Laws, and of Harold F. Birnbaum, Esq., one of the advisers to the original draftsmen of Article 9 and former chairman of the State Bar Committee on the Uniform Commercial Code. Mr. Richter and Mr. Birnbaum are members of the Los Angeles Bar.

In the meantime a joint subcommittee on Article 9 of the Editorial Board of the American Law Institute and of the Commissioners on Uniform State Laws had undertaken a revision of Article 9 in the light of the study of the New York Law Revision Commission and the experience in Pennsylvania where the law had been enacted in 1953. Through Mr. Birnbaum the work of the California committee was closely correlated with that of the subcommittee on Article 9 of the American Law Institute. Except in certain particulars, hereafter noted, the California draft follows in substance the final revised draft as approved by the sponsoring organizations.

Senator Fred S. Farr and Senator Donald L. Grunsky introduced in the 1957 Session of the California Legislature as Senate Bill 1402 this draft of Article 9.

In view of the comprehensive character of the legislation embodied in this bill, at the suggestion of the authors, the bill was referred to the Senate Judiciary Interim Committee for study.

The introduction of the bill in the 1957 Session brought the measure to the attention of various interested groups, some of whom since then have offered constructive comments. Since the end of the 1957 Session the California Bankers Association has continued its study of the measure and has prepared a revised draft which is printed herein. In this draft it is believed that the measure as it appeared in Senate Bill 1402 has been considerably improved. Likewise, there have been incorporated in this draft various changes suggested by other interested parties.

It is proposed to submit this draft to the Senate Judiciary Interim Committee as a substitute for Senate Bill 1402 in lieu of offering amendments to the bill now before the committee. In this way those interested will find it much easier to study the measure as it will be submitted to the committee.

The act will supersede most of the existing statutory law covering chattel mortgages, trust receipts, receivables, financing, pledges, factors' liens, conditional sale contracts and the like. The provisions of the Vehicle Code covering chattel mortgages and conditional sale contracts of motor vehicles are not affected. The act will eliminate most, if not all, of the artificial distinctions between these various types of instruments or based on the form of the transaction, although existing forms of instruments could still be used. It provides for one simple form of public notice regardless of the form of the transaction and requires all notices (except in the case of crop mortgages) to be filed in one central office, that of the Secretary of State.

It makes it possible for a merchant or manufacturer to finance his operations by borrowing on his inventory or work in process directly without the necessity of resorting to a trust receipt transaction or incurring the expense of a field warehousing arrangement. It makes possible a continuous "flow" of security from raw material into work in process, then into finished goods, and finally into receivables. It clarifies the law relating to future advances and after acquired property, and eliminates the confusion resulting from the decision in *Benedict v. Ratner*. It facilitates the taking back of a purchase money security interest by a seller of goods. It gives recognition to the growing practice of leasing machinery and equipment and should facilitate the financing of such transactions. It treats a conditional sale contract as essentially a security transaction and gives the same rights to a conditional vendee as are given a borrower.

The act establishes certain distinctions between mortgages and conditional sales of consumer goods, that is, goods acquired for personal, family or household purposes, and other commercial transactions. It declares void any waiver of defenses by a purchaser of consumer goods as against an assignee of a conditional sale contract covering the goods, it restricts the effect of so-called "add on" clauses in mortgages of consumer goods, and it requires a lender who repossesses consumer goods upon which the borrower has paid 60 percent or more of the purchase price to realize promptly on the security.

This measure differs from the so-called "official" draft of Article 9 chiefly in the following particulars: (a) Public notice would be given in all cases, except in the case of crop mortgages, by filing in the Secretary of State's office, and the Secretary of State would be required to send to the county recorder of each county each day a list of all filings from that county. (b) The complicated provisions of the official draft dealing with the taking and enforcement of security interests in fixtures are omitted, thereby leaving the law of California on this subject exactly as it is today. (c) Certain special provisions of the code dealing with production loans on annual crops are omitted as being unworkable under agricultural conditions in California. (d) Subsequent general creditors without knowledge are given broader protection than under the official draft. (e) A subsequent secured party who has actual knowledge of an earlier unperfected security interest would take subject to it, which is not always true under the official draft.

Dated: August 21, 1958.

EDWARD D. LANDELS
*Counsel to Commission on
 Legislation and Taxation
 California Bankers Association*

The people of the State of California do enact as follows:

SECTION 1. There is hereby added to the Civil Code a new division to be numbered fifth and to be entitled "Secured Transactions Involving Personal Property," reading as follows:

DIVISION FIFTH

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

5101. Short Title. This division shall be known and may be cited as Secured Transactions Act.

5102. Policy and Scope of Division. (1) Except as otherwise provided in Section 5103 and in Section 5113 this division applies, so far as concerns any personal property within the jurisdiction of this State

(a) To any transaction (regardless of its form) which creates a security interest in personal property including goods, documents, instruments, general intangibles, chattel paper, accounts, and contract rights; and also

(b) To any sale of accounts, contract rights or chattel paper.

(2) This division applies to security interests created by contract including a pledge, assignment, chattel mortgage, chattel trust, factor's lien, inventory lien, equipment trust, conditional sale, trust receipt, deed of trust of personal property, other lien or title retention contract, and a lease or consignment intended as security. This division does not apply to statutory liens except as provided in Section 5308.

(3) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(4) As between the parties to a secured transaction involving goods which later become fixtures, rights and duties originally established continue to be governed by this division, but as to third parties such rights and duties are subject to the law relating to real property and fixtures.

5103. Transactions Excluded. This division does not apply

(a) To a security interest governed by the Ship Mortgage Act, 1920, as amended, or any other statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by security transactions in particular types of property;

(b) To a deed of trust, mortgage or other lien on real property; or to an assignment or other transfer of an interest in a deed of trust, mortgage or other lien on real property unless intended to create a security interest therein;

(c) To the assignment of a lease of real property or of rentals payable for the use of or under a lease of real property when such assignment is given as additional security for a loan secured by a deed of trust, mortgage or other lien on such real property, but this division does apply to any other assignment of rentals payable for the use of or under a lease of real property when such assignment is given as security;

(d) To a lien given by Section 1856, Section 1858.50, Section 1861, Section 1861a, Section 2144, Section 3051, Section 3052a, Section 3053, Section 3054, Section 3057, Section 3060, Section 3061, Section 3062, or Section 3065 (to the extent therein provided) of the Civil Code; or by Article 2, Chapter 13, Division 1 of the Financial Code; or by Section 491 of the Harbors and Navigation Code; except as provided in Section 5308 on the priority of such liens;

(e) To a transfer of a claim for wages, salary or other compensation of an employee;

(f) To an equipment trust covering railway rolling stock;

(g) To a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only or to a transfer of a contract right to an assignee who is also to do the performance under the contract;

(h) To a right represented by a judgment;

(i) To any right of setoff;

(j) To the rights of a person in an instrument cashed or handled for collection by him whether or not an advance is made by him against such instrument;

(k) To any loan made by an insurance company pursuant to the provision of a policy or contract issued by it and upon the sole security of such policy or contract.

5104. Definitions. (1) In this division unless the context otherwise requires:

(a) "Account" means any right to payment for goods sold or leased or for services rendered, which right is not evidenced by an instrument or chattel paper;

(b) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(c) "Buyer in ordinary course of business" means a person who buys goods in ordinary course from a person in the business of selling goods of that kind and who acts in good faith and without knowledge that the sale to him is in violation of the ownership rights of a third party or the terms of a security agreement covering the goods even though he has knowledge that a security interest exists in such goods. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(d) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or series of instruments, the group of writings taken together constitutes chattel paper;

(e) "Chief place of business" means chief place of business, in fact, and ordinarily means the place at which the executive offices of the business are located, and in the case of a corporation, it may or may not be the chief or principal place of business specified in its articles of incorporation or charter;

(f) "Collateral" means the property subject to a security interest, and includes accounts, contract rights, and chattel paper which have been sold;

(g) "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper and which does not constitute an account;

(h) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this division dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(i) "Document" means a bill of lading, a warehouse receipt, dock warrant, dock receipt, gin ticket, compress receipt or order for the delivery of goods and any other writing which in the ordinary course of business or financing is treated as evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document the writing must purport

to be issued by or addressed to a bailee, and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass;

(j) "Goods" includes all things which are movable at the time the security interest attaches but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also includes the unborn young of animals and growing crops;

(k) "Holder" means a person who is in possession of a document or an instrument or a security drawn, issued or endorsed to him or to his order or to bearer or in blank;

(l) "Holder in due course" means a holder who has taken an instrument under the following conditions:

(1) That it is complete and regular on its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it;

(m) "Instrument" means a negotiable instrument, or a security or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is by custom and usage transferred by delivery with any necessary indorsement or assignment;

(n) "Knowledge" means actual knowledge. Knowledge is acquired by an organization when it is acquired by the individual conducting the transaction or when he would have acquired it, if such knowledge had been imparted to him by another member of the organization having such knowledge if the latter had acted with due diligence and in good faith;

(o) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, execution or the like and includes an assignee for the benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest;

(p) "Negotiable document." A document is a negotiable document (1) if it provides for delivery of goods to bearer or to the order of a named person; or (2) where recognized in overseas trade, if it runs to a named person or assigns;

(q) "New value" includes new advances or loans made, or new obligations incurred, or the release of a valid and existing security interest, or the release of a claim to proceeds; but "new value" shall not be construed to include extension or renewals of existing obligations of the debtor, nor obligations substituted for such existing obligations.

(r) "Notice." A person has "notice" of a fact when

(1) He has knowledge of it; or

(2) He has received a notice or notification of it; or

(3) From all the facts and circumstances known to him at the time in question he should have known that it existed;

(s) A person "notifies" another by taking such steps as may reasonably be expected in ordinary course to cause such other person to receive such notice or notification whether or not the other person actually comes to know of it;

(t) A person "receives" a notice or notification when

(1) It comes to his attention; or

(2) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

Notice or a notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual then in charge of the transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence, or in the case of an organization maintaining branch offices at the time when it would have been brought to his attention if the personnel of the organization at such branch or office had exercised due diligence;

(u) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust partnership, or association, two or more persons having a joint or common interest and any other legal or commercial entity;

(v) "Security" means a writing issued in bearer or registered form of a type commonly dealt in upon securities exchanges or markets or commonly recognized as a medium for investment if it is one of a class or series and if it evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer;

(w) "Security agreement" means an agreement which creates or provides for a security interest;

(x) "Security interest" means an interest in personal property which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to this division. Unless a lease or consignment is intended to create a security interest, reservation of title thereunder is not a "security interest."

Whether a lease is intended to create a security interest is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended to create a security interest, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security;

(y) "Secured party" means a lender, seller or other person in whose favor there is a security interest or to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(z) "Value." A person gives "value" for rights in property if he acquires his rights

(1) In return for a binding commitment to extend credit or the extension of immediately available credit whether or not drawn upon and whether or not a charge-back for cause is provided for; or

(2) As security for or in total or partial satisfaction of a pre-existing claim; or

(3) By accepting delivery pursuant to a pre-existing contract for purchase; or

(4) Generally in return for any consideration sufficient to support a simple contract.

5105. Definition of "General Intangibles." "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents, and instruments. It includes, but is not limited to; a deposit or other account in a bank or trust company; an account in a savings and loan association, credit union, industrial loan company or similar institution; the interest of a beneficiary under a trust unless represented by a writing which is a security; the interest of an heir or other person in the estate of a decedent; the interest of a creditor or other person in an estate under the supervision of a court under a law relating to bankruptcy, reorganization or insolvency; any right or interest under a contract of insurance; claims arising from a tort; rentals payable under a lease of real property; and rights in personalty, such as copyrights, licenses, franchises, royalties, distribution rights, agreements to render personal services, and the like.

5106. Definition of "Purchase Money Security Interest." A security interest is a "purchase money security interest" to the extent that it is

(a) Taken or retained by the seller of the collateral to secure all or part of its price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

5107. When After-acquired Collateral Not Security for Antecedent Debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

5108. Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory." Goods are

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "Equipment" if they are used or bought for use primarily in a business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "Farm products" if they are crops, livestock, or materials used, produced, or consumed in farming operations or if they are products of crops or of livestock in their unmanufactured states (such as ginned or unginned cotton, woolclip, honey, tanbark, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory. The term "livestock" includes cattle, sheep, horses, pigs, bees, turkeys, chickens, rabbits, animals raised for fur and the like;

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contract of service or if he has so leased or furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

5109. Sufficiency of Description. For the purpose of this division a description of personal property or of real property is sufficient, whether or not specific, if it reasonably identifies such property. After acquired property may be referred to by general kind or class if the property can be reasonably identified as falling within such kind or class when it is acquired by the debtor. The use of the word "proceeds" is sufficient without further description to cover proceeds of any character.

5110. Applicability of Bulk Transfer Law. The creation of a security interest is not a bulk transfer under Section 3440.1 of the Civil Code.

5111. Where Collateral Is Not Owned by the Obligor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the obligor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 5502(2) or under Section 5504(1) and is not liable for the debt or for any deficiency after foreclosure sale, and he has the same right as the obligor

(a) To receive statements under Section 5208;

(b) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 5505;

(c) To reclaim the collateral under Section 5506; and

(d) To recover losses caused to him under Section 5208(2).

5112. Security Interests Arising Under the Uniform Sales Act. A security interest arising solely under the Uniform Sales Act is subject to the provisions of this division except that to the extent and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security interest; and

(c) The rights of the secured party on default by the debtor are governed by the Uniform Sales Act.

5113. Accounts, Contract Rights, and Equipment Relating to Another Jurisdiction; Incoming Goods Already Subject to a Security Interest. (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this State, a security interest therein is governed by this division; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located. If such record-keeping office is moved into this State after a security interest in accounts or contract rights has been perfected under the law of another jurisdiction, a security interest attaching to accounts and contract rights within 30 days after such move shall be deemed perfected under the law of this State.

(2) This division governs a security interest in goods of a type which are normally moved for use from one jurisdiction to another (such as automotive equipment, rolling stock, roadbuilding equipment, commercial harvesting equipment, construction machinery and the like) if such goods are equipment or are inventory because the debtor holds them for lease or has leased them to a user, provided the chief place of business of the debtor is in this State; otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located governs. If the chief place of business is located in a jurisdiction which does not provide for perfection of a security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this State. If such chief place of business is moved into this State after a security interest in such

collateral has been perfected under the law of another jurisdiction, a financing statement signed by the secured party shall be filed in this State within four months thereafter; if not so filed, the security interest shall become unperfected unless the filing provisions of this division are inapplicable under Section 5304(2).

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this State, the validity of the security interest in this State is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this State, the security interest continues perfected in this State for four months after being brought into this State and also thereafter if within the four-month period it is perfected in this State. The security interest may also be perfected in this State after the expiration of the four-month period; in such case perfection dates from the time of perfection in this State. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this State, it may be perfected in this State; in such case perfection dates from the time of perfection in this State. However, if the parties to the security transaction understood at the time the security interest attached that the property would be kept in this State and it was brought into this State within 30 days after the security interest attached for purposes other than transportation through this State, then the validity of the security interest in this State is to be determined by the law of this State.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by an ownership certificate or certificate of title issued under a statute of this State or of any other jurisdiction which requires indication on the certificate of any security interest in the property or the issuance of such a certificate evidencing the existence of a security interest as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate so long as such certificate is outstanding.

PART 2. GENERAL PROVISIONS RELATING TO SECURITY AGREEMENTS AND RIGHTS OF PARTIES THERETO

5201. Effect on Regulatory Statutes. Nothing in this division validates any charge or practice illegal under any statute or regulation thereunder governing usury, pawnbrokers, small loans, personal property brokers, conditional sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

5202. Title to Collateral Immaterial. Each provision of this division with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

5203. Enforceability of Security Interest; Formal Requisites. (1) Subject to the provisions of Section 5112 on a security interest arising under the Uniform Sales Act, a security interest is not enforceable against the debtor or third parties unless

(a) The collateral is in the possession of the secured party; or

(b) The debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or covers oil, gas or minerals to be extracted or covers timber to be felled, a description of the land concerned.

(2) A transaction, although subject to this division, is also subject to the Industrial Loan Law; to Sections 2981 and 2982 of the Civil Code; to the California Small Loan Law; to the Personal Property Brokers Law; to Division 8 of the Financial Code; insofar as any such statute by its terms applies to the transaction, and in the case of conflict between the provisions of this division and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

5204. When Security Interest Attaches; After-acquired Property; Future Advances. (1) A security interest cannot attach until a security agreement is made, value is given and the debtor has rights in the collateral. It attaches as soon as all the events in the preceding sentence have taken place, unless explicit agreement postpones the time of attaching; provided, that a nonpurchase money security interest in inventory shall not attach until either (a) the secured party takes possession or (b) 10 days have elapsed after a financing statement is filed. An assignment or transfer of property as security constitutes a security agreement.

(2) For the purposes of this section the debtor has no rights

(a) In crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) In fish until they are caught, in oil, gas or minerals until they are extracted, in standing timber until it is felled;

(c) In a contract right until the contract has been made;

(d) In an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) To crops which become such more than five years after the security agreement is executed except that a security interest in crops which is given by or in conjunction with a lease, mortgage, deed of trust or contract of sale affecting the land upon which the crops are to be grown if so agreed may attach to crops to be grown on the land concerned during the period that such lease, mortgage, deed of trust or contract of sale is in effect.

(b) To consumer goods, other than accessions and replacements, when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

5205. Use or Disposition of Collateral Without Accounting Permissible. A security interest is not invalid or fraudulent as against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossession, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

5206. Agreement Not to Assert Defenses Against Assignee. (1) An agreement by a buyer of consumer goods as part of the contract for sale that he will not assert against an assignee any defense or setoff arising out of the sale is not enforceable by any person.

(2) In all other cases an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of the claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument. A buyer or lessee who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

5207. Rights and Duties When Collateral Is in Secured Party's Possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession.

(2) Unless otherwise agreed, and subject to the provisions of Part 5 after default, when collateral is in the secured party's possession.

(a) Reasonable expenses including the cost of any insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) Except to the extent compensated for by insurance proceeds, the risk of loss or damage is on the debtor, unless the loss or damage results from failure of the secured party to comply with this section;

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may not make any use of the collateral except in the exercise of his duty of custody and preservation, but may repledge it upon terms which do not impair the debtor's right to reclaim it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

5208. Request for Statement of Account or List of Collateral. (1) The secured party upon written request of the debtor made in good faith shall furnish to the debtor or to any third person named by him, a statement of the aggregate amount of unpaid indebtedness as of a specified date.

(2) The secured party upon written request of the debtor made in good faith shall furnish to the debtor or to any third person named by him a statement listing or otherwise reasonably identifying the collateral claimed or held by the secured party. If the collateral consists of inventory, chattel paper or accounts, the security agreement may define or limit the obligations of the secured party under this paragraph.

(3) If the secured party no longer has an interest in the obligation or collateral at the time a request is received he need not give such statement, but he must disclose the name of his assignee or transferee and his address if known to him. An assignee or transferee is not subject to this section until a request is received by him.

(4) If the secured party is an organization maintaining branches or branch offices the requests herein provided for shall be sent to the branch or branch office at which the security transaction was entered into or at which the debtor is to make payment of his obligation, and the secured party's statement, unless otherwise specified, shall be deemed to apply only to indebtedness entered into at or payable to such branch or branch office and to any collateral taken by such branch or branch office.

PART 3. VALIDITY OF SECURITY AGREEMENT; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

5301. General Validity of Security Agreement. Except as otherwise provided in this division, a security agreement is effective according to its terms between the parties, against encumbrancers, purchasers and other transferees of the collateral and against creditors.

5302. When Security Interest Is Perfected; Continuity of Perfection. (1) A security interest is perfected when it has attached and when any other steps required by this division for perfection in the particular case, such as filing or taking possession, have been taken. If such steps are taken before the security interest attaches, the security interest is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this division and is subsequently perfected in some other way permitted under this division, without any intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously.

(3) If a security interest in goods is perfected in accordance with this division, such security interest does not become unperfected by reason of a subsequent change in the use to which the goods are put.

5303. When Possession by Secured Party Perfects Security Interest Without Filing. A security interest in goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest perfected by possession is perfected from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this division. The security interest may be otherwise perfected as provided in this division before or after the period of possession by the secured party.

5304. When Filing Is Required to Perfect a Security Interest. (1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in the possession of the secured party;
- (b) A purchase money security interest in consumer goods;
- (c) A security interest in a general intangible;
- (d) A security interest arising under the Uniform Sales Act;
- (e) A security interest in vehicles required to be registered under the Vehicle Code, unless such vehicles constitute inventory;
- (f) A security interest in property subject to a statute of the United States which provides for national registration or filing of all security interests in such property;
- (g) A security interest temporarily perfected in instruments or documents under Section 5314;
- (h) A security interest in proceeds for a 10-day period under Section 5315.

(2) A security interest in vehicles required to be registered under the Vehicle Code may be perfected only as provided in said code, unless such vehicles constitute inventory, provided, that the rights in such vehicles of a purchaser or encumbrancer of chattel paper as against the holder of another security interest in the chattel paper shall be determined by the provisions hereof. A security interest in property subject to a statute of the United States which provides for national registration or filing of all security interests in such property may be perfected only by filing or registration under such statute.

(3) If a secured party assigns or transfers a perfected security interest, no filing under this Division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

5305. Effect of Failure to Perfect a Security Interest. (1) An unperfected security interest is subordinate to the rights of:

(a) A person holding a perfected security interest in the collateral who gave any value pursuant to his security agreement without knowledge of the unperfected security interest;

(b) A person holding another unperfected security interest in the collateral whose security interest first attached;

(c) A person who becomes a lien creditor before the security interest attaches;

(d) In the case of inventory, a buyer in the ordinary course of business; in the case of other goods, instruments, documents, and chattel paper, a buyer to the extent that he gives value and receives delivery without knowledge of the unperfected security interest, and a transferee in bulk who gives value and takes delivery without knowledge of the unperfected security interest and who has complied with Section 3440.1 of the Civil Code if applicable;

(e) In the case of accounts and contract rights, a transferee to the extent that he gives value without knowledge of the unperfected security interest;

(f) A person holding a purchase money security interest in collateral other than inventory for a period of 10 days after the security interest attaches.

(g) Any other person as to whose rights the unperfected security interest would be subordinate if it were a perfected security interest.

(2) An unperfected security interest has priority for a period of ten days after it attaches over the rights of a lien creditor who becomes such after the security interest attaches, and such priority continues thereafter if the security interest is perfected within such 10-day period. If a security interest is not perfected within 10 days after it attaches, it is subordinate to the rights of a lien creditor who becomes such while it remains unperfected.

5306. Effect of Knowledge Generally. Except as otherwise expressly provided in this division, a security interest, whether or not perfected, is subordinate to the ownership, security, or contract rights of a third party in or to the collateral if the holder of the security interest had knowledge of such rights at the time he first gave value pursuant to his security agreement.

5307. Priority of Perfected Security Interest. (1) Except as otherwise expressly provided in this division, conflicting perfected security interest in the same collateral rank in the order of perfection, provided, that when a financing statement must be filed as a condition to perfection of the security interest or when a financing statement is filed to perfect a security interest under Section 5314, the security interest shall be deemed to have been perfected from the time of filing for the purpose of determining priority whether it attached before or after filing; and, provided, that as between two holders of perfected security interest in a general intangible consisting of a right to payment or performance, the secured party first giving written notice to the person who is or may become obligated to make the payment or to perform shall have priority.

(2) Except as otherwise expressly provided in this division for the purpose of priority a continuously perfected security interest is deemed at all times to have been perfected by filing if it was originally perfected by filing and it is deemed at all times to have been perfected otherwise than by filing if it was originally perfected otherwise than by filing.

(3) A perfected security interest has priority over the rights of a lien creditor if the lien creditor became such after the perfection of the security interest. A perfected security interest, if perfected within ten days after it attaches, also has priority over the rights of a lien creditor who became such after the security interest attached.

5308. **Priority of Certain Liens Arising by Operation of Law.** When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute for such materials or services takes priority over a perfected security interest if and to the extent provided by the statute.

5309. **Protection of Buyers in Ordinary Course of Business.** A buyer in ordinary course of business other than a buyer purchasing farm products from a seller engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected unless the secured party has possession of the goods.

5310. **Protection of Transferees of Instruments and Documents.** Nothing in this division limits the rights of a holder in due course of negotiable instrument under Division 3, Part 4, Title 15 of the Civil Code or a holder to whom a negotiable document of title has been duly negotiated under Division 3, Part 4, Title 7, Chapter 3, Article 3 or under Division 3, Part 4, Title 3, Chapter 2, Article 3A or Article 3B of the Civil Code or a bona fide purchaser of a security under the Uniform Stock Transfer Act and such holders or purchasers have priority over an earlier security interest even though perfected. Filing under this division does not constitute notice of the security interest to such holders or purchasers.

5311. **Transfer of Chattel Paper and Nonnegotiable Instruments.** A purchaser of or a holder of a security interest in chattel paper or a nonnegotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under Section 5314. A purchaser of or the holder of a security interest in chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest which is claimed merely as proceeds of inventory subject to a security interest, even though he has knowledge that the specific paper is subject to the security interest.

5312. **Purchase Money Security Interest.** (1) A purchase money security in goods which are or become inventory of the purchaser is subordinate to the rights of a secured party in such inventory under an afteracquired property clause who filed a financing statement covering inventory of the debtor prior to the time a financing statement covering such purchase money security interest was filed.

(2) In all other cases if a purchase money security interest is perfected when it attaches or within 10 days thereafter, it has priority over the rights of a transferee in bulk, of a lien creditor, of a buyer (unless he is a buyer in the ordinary course of business), and of a secured party claiming under an after-acquired property clause.

5313. **Advances by Holders of Perfected Security Interests.** (1) A perfected security interest has priority over a later perfected security interest as to advances made by the holder of the earlier perfected security interest after the later security interest has attached (subject to the provisions on purchase money security interests) whether or not such advances are made pursuant to a commitment (a) to the extent that any such advance together with all other sums then owing to the earlier secured party by the debtor and secured by the security interest do not exceed a maximum amount set forth in the financing statement of the earlier secured party even though during the period of financing the obligations owing to the earlier secured party as they exist at any particular time have been repaid in part or in full, or (b) if the advance or a binding commitment therefor was made by the earlier secured party before he had received written notice from the later secured party of such party's security interest and that he has given or proposes to give new value to the debtor, or (c) if the advance is made by the earlier secured party for the protection, maintenance, preservation or repair of the collateral or any part thereof or of the secured party's interest therein.

(2) A security interest which secures an obligation to reimburse a surety or other person secondarily obligated to pay or to perform is subordinate to a later security interest given to a secured party who makes a new advance or gives other new value to enable the debtor to perform the obligation for which the earlier secured party is liable if in fact such advance or new value is so used.

5314. **Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be

perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this division.

5315. "Proceeds"; Secured Party's Rights on Disposition of Collateral. (1) "Proceeds" includes accounts which are created and any personal property which is received upon the sale, exchange, collection or other disposition of the collateral or of earlier proceeds. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) A filed financing statement covering the original collateral also covers proceeds; or

(b) The security interest in the proceeds is perfected before the expiration of the 10-day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) In identifiable noncash proceeds;

(b) In identifiable cash proceeds in the form of money which is not commingled with other money or which is deposited prior to the insolvency proceedings in a separate bank account containing only such proceeds;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) In all cash and bank accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this subparagraph (d) is

(i) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed

by the seller or the secured party, the following rules determine priorities as to the goods:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 5311.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected as a security interest in the goods as proceeds under paragraph (a) or (b) of paragraph (3) of this section or be perfected in the goods as goods for protection against lien creditors of the transferor and purchasers or encumbrancers of the returned or repossessed goods.

5316. Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to Section 5317(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attached to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) A subsequent purchaser or encumbrancer for value of any interest in the whole; or

(b) A lien creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) The holder of a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, or the subsequent encumbrance is given or the lien by judicial proceedings is obtained without knowledge of the security interest and before it is perfected or the subsequent advance under the prior perfected security interest is made under circumstances entitling him to priority under Section 5313. A purchaser of the whole at a foreclosure sale other than the holder of a security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(5) This section does not apply to goods which have been so manufactured, processed, assembled, attached or commingled that their identity has been lost or which have become an integral part of a product.

5317. Priority When Goods Are Commingled or Processed. (1) Except as otherwise provided in this part, a security interest in goods is perfected and subsequently the goods or a part thereof become part of a product or mass, the security interest continues in the product or mass if

(a) The goods are so manufactured, processed, assembled, attached or commingled that their identity has been lost in the product or mass or they have become an integral part of a product; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed, assembled, attached or commingled.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each originally attached bears to the cost of the total product or mass, provided that, if such product or mass constitutes inventory, each such security interest in favor of a seller is subordinate to a security interest in the product or mass as a whole in favor of a lender which was previously perfected by filing.

5318. Severance of Crops and Removal From Premises. A security interest in crops growing or to be grown which is perfected by filing with the county recorder ceases to be a perfected security interest in crops which have been severed and removed from the premises of the grower, but if the statement of financing covers proceeds the security interest remains perfected in any proceeds resulting from a sale or other disposition made before the crops had been removed from the premises of the grower. When crops have been severed and removed from the premises of the grower a security interest may be perfected therein as goods other than crops.

5319. Priority Subject to Subordination. Nothing in this division prevents subordination by agreement by any person entitled to priority.

5320. Secured Party Not Obligated on Contract of Debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

5321. Defenses Against Assignee; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 5206 the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment or of the arrangement for assignment.

(2) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(3) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties or which requires the account debtor's consent to such assignment is ineffective.

PART 4. FILING

5401. Place of Filing; Erroneous Filing. (1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is accounts, chattel paper, documents, contract rights, inventory, equipment, livestock or any other type of property not specifically referred to in this section, then in the office of the Secretary of State in San Francisco;

(b) When the collateral is crops, then in the office of the county recorder of each county in which the land or any part thereof on which the crops are growing or to be grown is located. If a mortgage, deed of trust, lease or other instrument affecting real property grants a security interest in crops growing or to be grown on the real property and the recording thereof is intended to serve as a financing statement the title on the face thereof shall include the words "Financing Statement Covering Crops."

(2) The Secretary of State and the county recorder of the appropriate county are herein referred to as the filing officer. The Secretary of State shall file and hold for public inspection all financing statements and other instruments filed with him hereunder except as herein otherwise provided and the county recorder shall record and return to the person filing the same with him all financing statements and other instruments filed with him for record hereunder.

(3) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this division and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

5402. Formal Requisites of Financing Statements; Amendments. (1) A financing statement is sufficient if it is signed by the debtor by the secured party, gives the name and mailing address of the secured party, the name and mailing address of the debtor and contains a statement indicating the type of collateral or describing the items of collateral. If filed with the Secretary of State the financing statement shall also set forth: if the debtor is an individual, the county and address of his residence and the county and address of his chief place of business, if any, and if the debtor is an organization, the county and address of its chief place of business. A financing statement may be filed before a security agreement is made or before a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real property upon which they are growing or to be grown. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State. Such financing statement must state that the collateral was brought into this State under such circumstances;

(b) Proceeds under Section 5315, if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

FINANCING STATEMENT

Name of debtor_____

Mailing address of debtor_____

Name of secured party_____

Mailing address of secured party_____

County and address of debtor's residence

(if an individual)_____

and county and address of his chief place of business (if any)_____

County and address of chief place of business of debtor

(if an organization)_____

(1) This financing statement covers the following types (or items) of property:
(description, e.g., "inventory", "accounts", etc.)

(2) (If collateral is crops) The above described crops are growing or are to be grown on:

(description of real property)

(3) (If proceeds or products of collateral are claimed) (Proceeds) (Products) of the collateral are also covered

(4) (Optional) The final maturity date of the indebtedness covered hereby is _____, 19_____.

(5) (Optional) The maximum amount of the indebtedness to be secured at any one time is \$_____.

Dated: _____, 19_____.

Signature of debtor

Signature of secured party

(If the transaction consists of a sale of accounts, contract rights or chattel paper, the term seller or assignor should be substituted for debtor and the term buyer or assignee should be substituted for secured party.)

(4) The term "financing statement" as used in this division means the original financing statement and any amendments signed by the debtor and the secured party or a financing statement signed only by the secured party under Section 5402(2) and any amendments thereto, but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

5403. What Constitutes Filing; Duration of Filing; Continuation Statements; Effect of Lapsed Filing. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Division.

(2) The Secretary of State shall mark each statement with a consecutive file number and with the date and time of filing. He shall index the statements according to the name of the debtor (or assignor) and shall note in the index the file number and the mailing address of the debtor (or assignor) given in the statement.

(3) The county recorder shall mark each statement filed with him with the date and time of filing and shall record it in the same manner as instruments affecting real property and shall index the same under the name of the debtor as grantor and under the name of the secured party as grantee and shall return the statement to the secured party after recording.

(4) A filed or recorded financing statement is effective for a period of five years from the date of filing or recording or, if the latest maturity date of the indebtedness is set forth in the financing statement, then for a period ending five years after such latest maturity date. The effectiveness of a filed or recorded financing statement lapses on the expiration of such five-year period unless a continuation statement is filed or recorded prior to such lapse. Upon such lapse the security interest becomes unperfected.

(5) A continuation statement may be filed or recorded by the secured party of record within six months prior to the end of the five-year period. Any such continuation statement must be signed by the secured party of record, identify the original statement by giving the date and the names of the parties thereto and, if filed with the Secretary of State, the file number thereof and, if recorded, the book and page where recorded if available and state that the original statement is continued. Upon timely filing or recording of the continuation statement, the effectiveness of the original statement is continued for five years from the time when it would otherwise have lapsed, whereupon it lapses in the same manner as provided in subsection (4) unless another continuation statement is filed or recorded prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original financing statement.

(6) The Secretary of State shall mark each such continuation statement with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement. The county recorder shall record each such continuation statement in the same manner as an original financing statement and shall index the same under the name of the debtor as grantor and under the name of the secured party as grantee.

(7) The uniform fee for filing and indexing an original or a continuation statement is _____ dollars (\$_____).

5404. Termination Statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party of record must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number if filed with the Secretary of State. If the affected secured party of record fails to send such a termination statement within 10 days after proper demand therefor he shall be liable to the debtor for all actual damages suffered by the debtor by reason of such failure, and if the failure is in bad faith, for a penalty of one hundred dollars (\$100).

(2) The Secretary of State shall mark each such termination statement with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement. The county recorder shall record such termination statement in the same manner as an original financing statement and index the same under the name of the debtor as grantee and under the name of the secured party as grantor.

(3) The uniform fee for filing or recording and indexing a termination statement shall be _____ dollars (\$_____).

5405. Release of Collateral. (1) A secured party of record may by a writing release his security interest in all or a part of the collateral covered by a filed financing statement. A statement of release is sufficient if it is signed by the secured party of record, contains a statement describing the collateral being released, the

name and address of the debtor, and the file number of the original financing statement if filed with the Secretary of State.

(2) The Secretary of State shall mark each such statement with the date and time of filing and index the same under the name of the debtor and under the file number of the original financing statement. The county recorder shall record each such statement in the same manner as an original financing statement and shall index the same under the name of the debtor as grantee and under the name of the secured party as grantor.

(3) The uniform fee for filing or recording and indexing a statement of release shall be _____ dollars (\$_____).

5406. Statement of Assignment; Secured Party of Record. (1) If a secured party assigns or transfers his security interest in any collateral as to which a financing statement has been filed or recorded, a statement of such assignment may be filed or recorded. Such statement shall be signed by the secured party, describe the collateral as to which the security interest has been assigned, give the name and mailing address of the assignee or transferee, the name and address of the debtor and the file number of the original financing statement if filed with the Secretary of State.

(2) The Secretary of State shall mark each such statement of assignment or transfer with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement. The county recorder shall record the same in the same manner as an original financing statement and shall index the same under the name of the secured party as grantor and under the name of the assignee or transferee as grantee.

(3) An assignment may be filed at the time of the filing of the financing statement, in which event the Secretary of State shall first file the financing statement and index the assignment under the name of the debtor and under the file number given the financing statement. An assignment endorsed on the financing statement before it is filed with the Secretary of State need not be indexed by him.

(4) The uniform fee for filing or recording and indexing a statement of assignment shall be _____ dollars (\$_____).

(5) Whenever a continuation statement, an amendment to a financing statement, a termination statement, a statement of release or a statement of assignment signed by one other than the secured party of record is presented for filing or recording it must be accompanied by a statement of assignment signed by the secured party of record covering the collateral to which such continuation statement, amendment, termination statement, release, or assignment applies.

(6) Wherever in this division reference is made to the secured party of record it means the secured party named in the original financing statement or, if a statement of assignment has been filed or recorded, the assignee or transferee of the security interest in the collateral affected. Any continuation statement, amendment to a financing statement, termination statement, statement of release or statement of assignment signed by one other than the secured party of record as to the collateral affected thereby shall be ineffective for any purpose except as between the parties thereto.

5407. Furnishing of Information by Secretary of State. If the person filing any statement of financing, continuation statement, termination statement, statement releasing collateral, or statement of assignment, furnishes the Secretary of State a copy thereof, it shall be the duty of the Secretary of State, upon request, to note upon such copy the file number and date and time of the filing of the original and to deliver or mail such copy to such person.

Upon request of any person, it shall be the duty of the Secretary of State to issue his certificate showing whether or not there is on file on the date and time stated therein, any presently effective statement of financing naming a particular debtor, any continuation thereof, any amendment thereof, any assignment thereof, or any release of collateral covered thereby and if there is, giving the date and time of filing of each such statement and of each such amendment, continuation statement or assignment and of each such release and the names and addresses of each secured party named in each such financing statement and the name and address of any assignee. The fee for such a certificate shall be one dollar (\$1) plus one dollar (\$1) for each financing statement and for each assignment and for each release reported therein. Upon request the Secretary of State shall furnish a certified copy of any filed financing statement and of any other statement or instrument on file with him under this part for a fee of one dollar (\$1) per page.

5408. List of Filings to County Recorder. It shall be the duty of the Secretary of State on each day his office is open for business and as soon as practicable after the close of filings for that day to forward to the county recorder of each county of this State a list of all financing statements filed in his office during that day which name a debtor whose residence address or whose chief place of business address as set forth in the financing statement is located in that county. Such list shall give the name of the debtor, listed as near as may be in alphabetical order, the address of his residence and chief place of business, if any, as set forth in the financing statement and the file number of the statement. It shall be the duty of the county recorder of each county to keep said lists and to make them available for public inspection. The Secretary of State is authorized by regulation to fix a time which shall be not earlier than 3 o'clock p.m. as the closing hour for acceptance for filing of statements or instruments delivered to him for filing hereunder and to provide by regulation that all statements or instruments received in his office for filing after that hour shall be accepted for filing at the opening of his office on the next succeeding day that his office is open for business.

The failure of the Secretary of State or of the county recorder to perform any of the duties imposed upon them respectively by this section shall not in any way affect the effectiveness or validity of any filing made with the Secretary of State.

PART 5. DEFAULT

5501. Default; Procedure When Security Agreement Covers Both Real and Personal Property. (1) When a debtor is in default under a security agreement, a secured party has the remedies provided by this part. In addition he may reduce his claim to judgment, foreclose the security interest by any available judicial procedure, or both. All such remedies are cumulative and may be pursued concurrently or successively. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby.

(2) The rules stated in this part which give rights to the debtor and impose duties on the secured party may be waived or varied only as provided in this part.

(3) If a deed of trust or mortgage of real property includes personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the personal property and the real property under the provisions of law applicable to a sale under or a foreclosure of the deed of trust or mortgage, in which event none of the provisions of this part will apply except that the secured party shall give the notices provided for in Section 5504(3).

5502. Collection Rights of Secured Party. (1) When so agreed and in any event on default the secured party may bring an action against or otherwise collect from an account debtor or an obligor on an instrument comprising the collateral and in addition to other remedies, is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 5315.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors does not by such action waive his rights of charge back or of recourse and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency; but, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is not entitled to any surplus and is liable for any deficiency only if the security agreement so provides.

5503. Secured Party's Right to Take Possession After Default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by judicial action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 5504.

5504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition. (1) A secured party after default may sell or lease any or all of the

collateral in its then condition or following any commercially reasonable repairing, preparation, processing, or completion of manufacture. The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, repairing, processing, completion of manufacture, or preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral but only if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must furnish reasonable proof of his interest and satisfactory indemnification against the claim of any other person to such proceeds, and unless he does so the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time or place and on any terms, provided the secured party acts in good faith and in a reasonable manner.

Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his address, a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or deposited in the United States mail postage prepaid addressed to the debtor at his address as set forth in the financing statement and to any other secured party at the address set forth in his request for notice, or in either case at such other address as may have been furnished to the secured party in writing for this purpose, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall be given by publication at least once at least five days before the date of sale in a newspaper of general circulation published in the county in which the sale is to be held. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his residence or chief place of business or in the county in which the secured party has his residence or a place of business, if the debtor does not have a residence or chief place of business within this State. If the collateral is located outside this State or has been removed from this State, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed by public announcement at the time and place noticed for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a buyer for value all of the debtor's rights therein and discharges the security interest under which it is made and any security interest or lien subordinate thereto. The buyer takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings

(a) In the case of a public sale, if the buyer has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case if the buyer acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the

secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

5505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation. (1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it within 90 days under Section 5504.

(2) In any other case involving consumer goods or any other collateral a secured party who has or obtains possession may propose, after default, to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be given to the debtor and to any other secured party who has filed with the secured party a written request for notice of sale. Such notice shall be given not less than 15 days nor more than 90 days after obtaining possession (or after default if already in possession) and shall be given in the manner provided for in Section 5504(3). If the debtor or other person entitled to receive notification objects in writing within 15 days after such notice was given or if any other secured party objects in writing within 15 days after the secured party obtains possession (or after default if already in possession) the secured party must dispose of the collateral under Section 5504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

5506. Debtor's Right to Redeem Collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 5504 or before the obligation has been discharged under Section 5505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by payment in full of all monetary obligations and performance in full of all other obligations secured by the collateral including the expenses reasonably incurred by the secured party in retaking, holding and preparing, repairing or processing the collateral for disposition, in arranging for the sale, and if provided in the agreement, his reasonable attorneys' fees and legal expenses.

PART 6. GENERAL PROVISIONS

5601. Variation by Agreement. (1) The effect of the provisions of this division may be varied by agreement except as otherwise provided in this division and except that the obligations of good faith, reasonableness and care prescribed by this division may not be disclaimed by agreement.

(2) The presence in certain provisions of this division of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (1).

5602. Time; Reasonable Time. (1) Whenever by this division any action is required to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purposes and circumstances of such action.

5603. Supplementary General Principles of Law Applicable. Unless displaced by the particular provisions of this division, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement its provisions.

5604. Articles of Wearing Apparel and Adornment. No security interest may be given or taken on personal articles of wearing apparel or personal adornment except my way of pledge.

5605. The terms "pledge," "mortgage," "conditional sale," "lien," "assignment," "trust receipt" and like terms when used in any statute or public or private writing in referring to a security interest in personal property shall include a corresponding type of security interest under Division 5 of the Civil Code, Secured Transactions Act.

SECTION 2. Transactions validly entered into before the effective date of this act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or appealed by this act as though such repeal or amendment had not occurred.

SECTION 3. Section 955 of the Civil Code amended to read:

955. Subject to the provisions of Division Fifth of this code, the transfer of a contract of conditional sale, or of an obligation to pay money represented by a chattel mortgage or trust receipt and not evidenced by a negotiable instrument, or of an obligation to pay money represented by a lease of personal property, or a nonnegotiable instrument which is a note, bill of exchange or acceptance shall be deemed perfected against third persons when such contract or evidence of indebtedness has been endorsed or assigned in writing and delivered to the transferee, whether or not notice of such assignment has been given to the obligor; but such endorsement, assignment or delivery shall not be, of itself, notice to the obligor so as to invalidate any payments made by him to the transferor.

SECTION 4. Section 955.1 of the Civil Code is amended to read:

955.1. Except as provided in Section 955, and subject to compliance with any applicable statute requiring recording and subject to the provisions of Division Fifth of this code, the transfer of any general intangible as defined in Division Fifth of this code, and the transfer of any right to payment not constituting a negotiable instrument shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing; provided, however, that as between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing shall have priority; but such assignment shall not be, of itself, notice to the obligor so as to invalidate any payments made by him to the transferor.

SECTION 5. Section 2892 of the Civil Code is repealed.

SECTION 6. Section 2897 of the Civil Code is amended to read:

2897. Subject to the provisions of Division Fifth of this code, and other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

SECTION 7. Section 2922 of the Civil Code is amended to read:

2922. A mortgage of real property can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.

SECTION 8. Section 2924 of the Civil Code is amended to read:

2924. Every transfer of an interest in real property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which such mortgage or transfer is a security, such power shall not be exercised except where such mortgage or transfer is made pursuant to an order, judgement, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until (a) the trustee, mortgage, or beneficiary, shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default, identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded or a description of the mortgaged or trust property and containing a statement that a breach of the obligation for which such mortgage or transfer in trust is security has occurred, and setting forth the nature of such breach and of his election to sell or cause to be sold such property to satisfy the obligation; (b) not less than three months shall thereafter elapse; and (c) after the lapse of the three months the mortgagee, trustee or other person authorized to make the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that required by law for sales of real property upon execution.

SECTION 9. Section 2933 of the Civil Code is amended to read:

2933. A power of attorney to execute a mortgage of real property must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

SECTION 10. Section 2934 of the Civil Code is amended to read:

2934. Any assignment of a mortgage of real property and any assignment of the beneficial interest under a deed of trust may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof to all persons; and any instrument by which any mortgage or deed of trust of, lien

upon or interest in real property is subordinated or waived as to priority may be recorded, and from the time the same is filed for record operates as constructive notice of the contents thereof, to all persons.

SECTION 11. Sections 2955, 2956, 2957, 2958, 2958a, 2959a, 2960, 2961, 2962, 2963, 2964, 2965, 2966, 2967, 2968, 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978, 2980, and 2988 of the Civil Code are hereby repealed.

SECTION 12. Section 2980.5 of the Civil Code is amended to read:

2980.5. (a) As used in this section "contract" means any agreement for the leasing of livestock or other animate chattels, or any agreement for the bailment or feeding of cattle of such breeds or crossbreeds as are primarily used for the production of milk for human consumption (hereinafter termed "dairy cattle"); "lessor" means the lessor of any such chattels, or the bailor or person owning dairy cattle under a feeding agreement; "lessee" means the lessee of any such chattels or the bailee or person feeding dairy cattle. For the purposes of this section bovine animals of the Galloway, Hereford, Polled Hereford, Aberdeen Angus, shorthorn (other than milking shorthorn), and Brahma breeds or crossbreeds within any of said breeds, and steers of any breed or crossbreeds, are not "dairy cattle."

(b) Unless any such contract is recorded in accordance with subsection (d) of this section within 10 days after the contract is executed, every provision therein reserving title or property in any such chattels to the lessor after possession of the chattels is delivered to the lessee shall be void as to any purchaser, creditor or encumbrancer who, without actual knowledge of such provision, in good faith and for value purchases the chattels from the lessee or acquires a security interest therein or lien thereon by attachment or levy, before the contract is so recorded, and as to any other creditor who, without actual knowledge of such provision, in good faith and for value becomes a creditor after possession of the chattels is delivered to the lessee and before the contract is so recorded, and as against any such purchaser, creditor or encumbrancer title or property in any such chattels shall be conclusively presumed to have been transferred to the lessee unless the contract is so recorded.

(c) Without limiting the generality of subsection (b) of this section, for the purposes of this section a secured party having a security interest in livestock or other animate chattels and whose security agreement provides that it shall cover any such chattels subsequently acquired by the debtor shall be deemed to acquire a security interest upon any such chattels, the possession of which is thereafter delivered to the debtor under any contract as above defined, at the time possession thereof is acquired by the debtor, and such security interest shall be prior and superior to the right, title or interest of the lessor under any such contract unless the contract is recorded within 10 days after the contract is executed.

(d) Any such contract must be acknowledged or proved and certified and must be recorded in the office of the county recorder of the county where the chattels are located at the time the contract is executed and also in the county where the lessee resides unless the lessee is a nonresident. Where the lessee is a corporation or a partnership the county of residence thereof for the purpose of recording such contract shall be deemed to be the county wherein such corporation or partnership has its principal place of business within this State.

SECTION 13. Sections 2996, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, and 3011 of the Civil Code are hereby repealed.

SECTION 14. Sections 3012 to 3016.16, inclusive, of the Civil Code are hereby repealed.

SECTION 15. Sections 3017 to 3029, inclusive, of the Civil Code are hereby repealed.

SECTION 16. Sections 3030 to 3043 of the Civil Code are hereby repealed.

SECTION 17. Section 3440 of the Civil Code is amended to read:

3440. Every transfer of personal property and every lien on personal property made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery followed by an actual and continued change of possession of the things transferred, is conclusively presumed fraudulent and void as against the transferor's creditors while he remains in possession and the successors in interest of those creditors, and as against any person on whom the transferor's estate devolves in trust for the benefit of others than the transferor and as against purchasers or encumbrancers in good faith subsequent to the transfer.

This section shall not apply to any of the following:

(a) Things in action.

(b) Security interests governed by Division Fifth of this code.

(c) The sale of accounts, contract rights or chattel paper governed by Division Fifth of this code.

(d) Ships or cargoes at sea or in a foreign port.

(e) Contracts of bottomry or respondentia.

(f) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged in the same form as provided for chattel mortgages, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(g) The transfer, or assignment, statutory or otherwise, made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally, or to any mortgage or chattel mortgage made for the benefit of creditors generally.

(h) Property exempt from execution.

SECTION 18. Section 726 of the Code of Civil Procedure is amended to read:

726. There can be but one form of action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real property, which action must be in accordance with the provisions of this chapter. A mortgage upon or a security interest in personal property may be foreclosed in like manner as a mortgage upon real property. In such action the court may, by its judgment, direct a sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount due plaintiff, including, when the mortgage or security agreement provides for the payment of attorneys' fees such sum for such fees as the court shall find reasonable, not exceeding the amount named in the mortgage or agreement.

[NOTE: In the final bill the balance of this section will have to be printed without change.]

SECTION 19. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 20. This act shall become effective on -----, 19----

2. THE PROPOSAL CONSIDERED IN DETAIL

Senate Bill 1402 (1957 session), Secured Transactions Involving Personal Property. Hearing September 4, 1958, State Capitol, Sacramento.

Subcommittee on Civil Code, Civil Actions and Civil Procedure:

Senator John William Beard, Chairman.

Senator James A. Cobey.

Senator Jess R. Dorsey.

Senator Edwin J. Regan.

Present at This Hearing:

Senator John William Beard, Chairman.

Senator Donald L. Grunsky.

Senator Jess R. Dorsey.

Senator Nathan F. Coombs.

John A. Bohn, Committee Counsel.

Witnesses:

Mr. Ed Landels, California Bankers Association.

Mr. Edwin Corbin, Vice President, Security National Bank, Los Angeles.

Mr. Ted Johnson, Senior Loan Administrator, Security National Bank, Los Angeles.

Mr. Frank Weller, Credit Managers Association of Southern California, Los Angeles.

Mr. Walter Bruns, Bank of America.

Mr. James Connors, Board of Trade, San Francisco.

Representative of California County Recorders Association, Northern Division.

The hearing was called to order by Senator Beard, and it was pointed out that the bill to be considered at this hearing was a revised version, prepared by the California Bankers Association. Mr. Edward D. Landels, general counsel for this association, was present to explain the proposal in detail. Opposition to the bill was present, but it was generally understood that they would not present their case at this time so as to permit the proponents time to present the revised bill in detail for the benefit of the subcommittee and those present.

Senator Beard noted for the record that notice of the hearing had been sent to 39 organizations who might possibly be affected by the bill.

MR. LANDELS: Mr. Chairman and members of the committee. You will remember that S.B. 1402 was introduced at the last session of the Legislature by Senators Farr and Grunsky and by agreement with the authors and the proponents, was referred to the subcommittee. S.B. 1402 was in substance Article 9 of the proposed Uniform Commercial Code. Following the adjournment of the Legislature the Committee of the California Bankers' Association which had initially worked on the bill continued to hold meetings at which Mr. George Richter, Mr. Harold Birnbaum, who is one of the original draftsmen of Article 9 for the American Law Institute participated and as did Mr. Kenneth Johnson, counsel of the Bank of America. Bill redrafted in form presented today in green folder so as to make it easier to study.

The American Law Institute, in conjunction with the Commissioners on Uniform State Laws about 15 years ago began an exhaustive review of the entire field of commercial law in attempt to bring up to date the existing uniform acts covering the field of commercial law and rewrite them in one uniform statute. The first draft was published in 1952 and covered sales—rewriting of the Uniform Sales Act and Negotiable Instruments, Bills of Lading and Warehouse Receipts and collections and letters of credit. Article 9, the last article of the code, covered the entire field of secured transactions in personal property. It was shortly thereafter enacted in Pennsylvania in 1953 and has been in effect there since that time. Later Massachusetts enacted it in its entirety, and more recently it was enacted in Kentucky. Three states have now adopted the entire Uniform Commercial Code.

The California Bankers Association appointed a committee and subcommittees to study the entire code. They felt at that time that Article 9 filled a longfelt need and at least formed the basis of what appeared to them a very desirable statute in that whole field of commercial activity.

It is the only broad field of commercial law which has not been brought up to date in statutory form during the last 50 years, as has sales, negotiable instruments, etc. The basic reason he feels is that Article 9's general concept of simplifying that entire field of lending appealed to the bankers and others . . . is the fact that the whole field of commercial credit in the sense of lending on the security of personal property has largely grown up in the last 30 or 40 years and today we have a patchwork of statutes all of which are different. Chattel mortgages are filed with the county recorder's office and in some cases in the Secretary of State's office with an effective date of five years. Another statute passed within the last five or six years governing secured transactions on accounts receivable, filing notice with the county re-

corder, good for three years. We have a Trust Receipts Act which nobody understands, in which you file a notice with the Secretary of State, which is good for one year. We have an Inventory Lien Law in which you file in the county, which is good for three years, all of which contain different provisions but entirely different terminology defining the rights of the secured party in determining priority. Also, we have the greatest amount of security in the field of conditional sales contracts in which we have no statute at all except for certain particular types of conditional sales. Coupled with that, we have the rule in California that a manufacturer or merchant cannot borrow on the security of his inventory, that being usually the chief and only asset he had.

The Trusts Receipts Act was devised primarily to get around the rule and permit borrowing on inventory in certain types of cases on the theory of the trusteeship relationship. We now have the Inventory Lien Law designed to fill the gap in certain instances and we have the practice of lending on the basis of a field warehouse in which the goods are all segregated behind a fence and somebody put in there to have constructive possession on behalf of the lender creating the fiction of a pledge. All that is expensive to the lender and the borrower. The chief purpose of Article 9 is to simplify the entire field of lending on the security of personal property regardless of its nature, provide a single type of security, a single set of rules and a single place to file—that basic concept is the purpose of Article 9 of the Uniform Commercial Code. In addition, it would permit direct borrowing on inventory by a merchant or a manufacturer if adequate public notice was given.

MR. BOHN: Is it generally correct to say that the effect of this bill is to make it simpler for a borrower to borrow on the security of personal property?

MR. LANDELS: I think in all cases it will simplify the mechanics. In certain types of property such as inventories, it would certainly make it easier.

MR. BOHN: What will be the effect of a bill of this sort upon the general giving of unsecured loans? Is it apt to be the situation that with all of these securities available that lenders will tend more and more to insist upon some type of security instead of giving a normal, commercial unsecured note for the operation of a business?

MR. LANDELS: No, I don't think. Mr. Johnson can probably answer that better than I can.

MR. JOHNSON: Not as a practical matter because that is what we are constantly dealing with. I would say this that the unsecured party who could borrow unsecured today it means that his credit standing is such that he doesn't have to pledge collateral and if any institution should ask an unsecured borrower who was entitled by his financial condition to borrow unsecured ask him for security he'd no longer have that account because competition would loan him the other way. The bank would rather make unsecured loans than secured loans because of the mechanics and the cost involved so wherever we can we'd make them unsecured and certainly not depend on the security.

MR. BOHN: At the present time how are these—let's take a small business—how is it financed from the standpoint of bank financing? Do you normally handle it on the basis of unsecured loans?

MR. JOHNSON: That, of course, is the part where to my mind and to many other loan officers who deal with this practical problem. In the State of California we have a great many growth companies, that's how the State has been built up, by growth companies. The banks are always under pressure and have been to do a better job. We think in California they've done one of the best jobs in the United States, but still it probably isn't sufficient. This recent federal law enabling these companies to form for that purpose is an evidence that maybe politically at least without satisfied as full a job so that we're constantly under pressure to do a better job with these growth companies and that's where this new law would apply. Most of these companies are over-expanded, they're doing a greater volume of business maybe than the capital in the early stages—profits never keep quite even because of taxes and other things, with the rate of growth and additional volume, so a bank can't loan those people except on a secured basis. Now to do that they might take as under the present law, a warehouse receipt on inventory which is a rather costly operation. They would take it on accounts receivable assignments, which are done. They might take it on chattel mortgages, all of which are extremely technical and exacting in requirements and under present laws and having lived through the 30's and liquidated a lot of bankruptcy trustees where the security of the bank was lost because of some little technical point all of which abounds finally because the bank if it has too many losses will tighten up its requirements obviously.

So this in our opinion, I think I can talk collectively, a lot of loan officers would eliminate a lot of those exacting requirements and maybe we could do this thing with greater facility and with less cost. There's no other way in the world—this Inventory Lien Law, I don't think any bank today would make a loan just on that Inventory Lien Law if they could depend upon warehouse they would still use a warehouse receipts, but it is a plus when you come down to a marginal case where that Inventory Lien Law may be an advantage and I personally and my good colleagues here don't feel it is an adverse interest between trade creditors and bankers—I mean we are all trying to build up the same customers so they're better customers for each of us and if there are any of those they ought to be able to be ironed out.

MR. BOHN: The purpose of my question was to try to ascertain whether the effect of the passage of this bill would tend to create a situation where lenders in more and more instances would require this type of security—in other words, tie the manufacturer up completely so that in the event of an adverse situation he would simply lose everything he had.

MR. JOHNSON: As to those getting unsecured credit it would not have effect. Those who were getting secured credit it could well be that this would be an add-on for whatever it would be, mainly the inventory lien factor because that's the only thing they would not have now, so it could be in the case of a secured where he's already given security this could be a little more plus, but not as to the unsecured, absolutely not.

MR. BOHN: This new code, of course, would apply not only to banks but to anybody who made a loan and it was that fringe type of lender that I was more concerned about than I was the banks.

Senator Grunsky asked Mr. Landels what groups are interested and which were included—categorywise—lending agencies, banks, loan companies, title companies, etc.

MR. LANDELS: It doesn't affect realty at all, only personal property. They were included but I don't think they have any interest.

SENATOR GRUNSKY: Has the Recorder's Association been notified?

MR. LANDELS: Yes, and I think we can anticipate some objections from the recorders. We met with the county recorder of Los Angeles recently and discussed the bill. He has more than he can do now and I don't think there will be any opposition there, but there may be some opposition from the other county recorders.

MR. LANDELS: The Bar Association has had a committee working on this for many years and the committee approved 1402. The new committee that has been appointed I don't believe has met yet.

SENATOR GRUNSKY: Would groups like Merchants and Manufacturers, Retail Grocers Association, pharmaceutical associations and others—

MR. LANDELS: I think we included all of them.

SENATOR GRUNSKY: Have they been in communication with you? What is the status there? Aren't they at all concerned?

MR. LANDELS: The only people who evinced any interest which might be termed opposition are representatives of the boards of trade who are here today, Mr. Conners and Senator Weller, who represent the people who get into trouble, the unsecured creditors. I think they possibly have some misgivings—you'll hear from them later. Other than that and the county recorders, I don't know of any opposition—of course this thing has been under general discussion for several years.

SENATOR GRUNSKY: It is our responsibility to be analysts for the general public and we are going to have to be a lot more critical than if the opposition is represented.

MR. BOHN: Larger organizations were notified. We didn't attempt to make a completely comprehensive notification on the theory that this was more or less a background session for the committee and that at a future date if the committee decides to proceed further with the bill that it would be set a full-scale public hearing which would certainly take one or two days. We notified those who had indicated an interest so they could listen in.

SENATOR GRUNSKY: Did any of you participate in any of the legislation in these other states. Do you know what legislative battles they had on it?

MR. LANDELS: In Pennsylvania they had none. In Massachusetts, I'm not sure, but practically no difficulties, and in Indiana where it passed one house but did not pass the other, the bankers killed it.

MR. JOHNSON: They just didn't understand it.

MR. LANDELS: In Kentucky I don't know of any legislative battle on it or I don't know of it.

SENATOR BEARD: Have any changes been made since this bill was heard at the last session?

MR. LANDELS: Yes, and I think before the next meeting of the committee we shall prepare a detail of those changes. The most im-

portant and a very significant one from the standpoint of those who expressed opposition to the bill, mainly the representatives of the people, and this draft as distinguished from the draft which was referred to this subcommittee. No loan on inventory other than a purchase money loan can become effective for any purpose until 10 days after notice is filed with the Secretary of State. That gives the unsecured creditors the same time that they now have under 3440 to attach or take any action which they see fit to take. We made that change because of that point which was raised by the representatives of the unsecured credit people. That I think is probably the most important change we've made between the drafts. The other changes go largely to clarification. A number of changes were made at the suggestion of Bank of America.

Part 1., Sections 5101 through 5113 contain more or less general provisions. Section 1 provides in effect that this act will apply to any transaction regardless of the form in which it may be set up which creates a security interest in personal property. In other words, this act would replace existing statutory provisions relating to trust receipts, chattel mortgages, conditional sales, inventory liens, pledges. There would be a single statute and whether or not it was called a pledge or called a trust receipt, etc., would not make any difference. All that would be required would be a simple agreement that the borrower agreed to give a security interest in the following property.

MR. BOHN: Section 5102 in subdivision (b) says that this statute applies "to any sale of accounts, contract rights or chattel paper." What does that mean?

MR. LANDELS: Well, there are two ways in which merchants finance on the basis of their receivables, they either borrow or they sell. For all practical purposes the transactions are the same. In either case the buyer or the lender pays an interest without possession. Under this a sale of accounts receivable notice would have to be given of the sale of accounts receivable whether it was a sale or whether it was a loan, much as you do under the present accounts receivable act and the same would apply to contract rights and chattel paper unless you took possession.

MR. BOHN: Under the present law suppose that a business had a series of dubious accounts receivable that were six months old or older and they decided in order to liquidate their position that they were going to make an outright sale, say to a collection agency, or to someone else. A collection agency is perhaps a bad example but that simply they were going to sell those accounts receivable for 30 cents on the dollar or whatever they could get for them in order to make their position more liquid. Under those circumstances where they are not selling all of their accounts nor are they selling their business, must they give notice?

MR. LANDELS: Yes, they must today, otherwise you'd have this situation: A merchant would sell his accounts to the X Finance Co. and no notice. The next day he'd go around and borrow on those same accounts from my finance company. For all practical purposes so long as he has possession of the accounts you have to give notice in the case of a sale or a loan. We do provide in here that that does not apply

where the accounts are sold as part of the sale of the business—no notice if the whole business is sold.

MR. BOHN: To this extent under the present law and also under your proposed statute, accounts receivables differ from other personal property insofar as sale is concerned.

MR. LANDELS: That's right.

MR. BOHN: Except insofar as the Bulk Sales Law is concerned.

MR. LANDELS: And contract rights and chattel paper.

MR. BOHN: And if he doesn't give the notice what happens? Suppose he doesn't know about—there's no problem of fraud and in good faith he wants to liquidate a portion of his accounts and he fails to give the notice and the assignee fails to give the notice. What is the net effect of that? Under the present law?

MR. LANDELS: It is not good as against creditors in the event of bankruptcy.

MR. JOHNSON: The assignee loses.

MR. LANDELS: He just does not have a preferred position as to those accounts.

MR. BOHN: In other words, if the notice is not given then the general creditor is still entitled to proceed against those accounts.

MR. LANDELS: He hasn't got a good lien on them.

MR. BOHN: Suppose in fact they are collected or portions of them collected.

MR. LANDELS: Then they disappear.

SENATOR DORSEY: Suppose they're paid. The man to whom the accounts were sold collects on them, then what?

MR. LANDELS: If he got it within 4 months of bankruptcy he might have to account.

MR. JOHNSON: It really means that the transaction would be vulnerable to attack in the event of bankruptcy, if the notice were not filed.

MR. BOHN: Is it fair to generalize then that under the present law accounts receivables are treated similarly to bulk sales in theory?

MR. LANDELS: You don't publish, you simply file a notice with the county recorder today of intention to assign accounts receivables.

MR. BOHN: And this doesn't change that situation?

MR. LANDELS: No, except for the part here—by the Secretary of State.

MR. BOHN: In other words, under this bill, the sale of accounts receivables from the standpoint of notice at least is handled just as if it were mortgaged, borrowing as against accounts receivable.

MR. JOHNSON: That's right, because a great deal of your financing of accounts receivables is done by assignment of the repurchase agent. It's a financing operation whether it's a sale or whether it's to borrow.

MR. BOHN: That was one of the purposes of my question. In other words, it not only extends to a situation where a sale is used as a device but it extends also to a good faith sale.

MR. LANDELS: That's right. You almost have to because otherwise it would be a secret sale.

MR. BOHN: To that extent then you feel that it differs from the sale of a physical asset?

MR. LANDELS: That's right.

MR. LANDELS: Section 5103 outlines the sort of transactions to which this act would not apply.

MR. BOHN: May I interrupt. From the standpoint of the protection of the general creditor and general lender you are adequately protected under the present law as far as the sale of accounts receivable is concerned? In other words, this bill will not give you any protection that you do not now already have? I'm speaking specifically now of the sale of accounts receivable.

MR. LANDELS: Except in one respect and a very important respect. This act would repeal the rule of *Benedict v. Ratner*. This rule was a decision to the effect that an assignment of an accounts receivable would not be good against a trustee in bankruptcy if you permitted the borrower, the owner of the accounts, to retain dominion over them and collect them and mix the proceeds with his own funds. That, in general, is the rule in *Benedict v. Ratner* and ever since this rule lenders have never known quite where they stood when they took an assignment of accounts receivable as security unless they set up a trusteeship of the proceeds and marked the accounts and all that sort of thing. This would repeal that rule and a man could be financed on the security of his accounts receivable even though he retained the job of collecting the accounts. To that extent lending on receivables would be much safer under this act than under the present law. As far as the statutory provisions are concerned relating to notice, there is very little change.

MR. BOHN: But as far as the sales are concerned this rule that you spoke of — the *Benedict* case — would not apply necessarily to a good faith sale. The problem of dominion and etc. would not arise.

MR. LANDELS: No, not if it was a good faith sale.

MR. BOHN: So that as to sales at least your present protection is substantially the same as you would get if this bill were enacted.

MR. LANDELS: Section 5103 outlines those transactions which are not covered by this statute.

SENATOR COOMBS: In 5103, Subsection (b) — explain that.

MR. LANDELS: What that purports to say, Senator, is that this act would apply to an assignment of a note and deed of trust as collateral security just as your pledge laws apply to that now. In other words, if I have a note and deed of trust and I turn that over to you or to a bank as collateral security this act would apply. The only significance of that is that if you sold out as a pledge as it would be today, you wouldn't have to give notice.

SENATOR GRUNSKY: That's the creditor's paper interest you're talking about and not the real property as security in the first instance, I get it.

MR. LANDELS: That's right. His first pledge was collateral, which is the law today. I take a note and deed of trust and pledge it to the bank — it's a pledge.

MR. BOHN: You have to go through the recording statutes, don't you, on that situation?

MR. LANDELS: You don't have to — it isn't required.

MR. BOHN: Wouldn't the bank normally require it?

MR. LANDELS: No.

MR. BOHN: In other words, you rely simply on the physical possession of the note.

MR. LANDELS: Not unless we're buying the paper.

MR. BOHN: Take the simple situation where the note is physically handed to the bank and the deed of trust is of course already recorded. What you do then for your security is to rely upon the physical possession of the note, is that correct?

MR. JOHNSON: You take an assignment of the note and deed of trust and the note is endorsed in blank or by special endorsement, but ordinarily we do not record the assignment.

MR. BOHN: You rely upon the theory that the deed of trust follows the note as the basic obligation so that you would be protected in the event the person—that's also the present law and so there's no substantial change insofar as that is concerned?

MR. JOHNSON: No.

MR. LANDELS: The only change in that situation would be you'd have to give a five-days' notice which you can waive.

MR. JOHNSON: That's the notice in the event of sale of a note.

MR. BOHN: The borrowing as against the note? Under the present law no notice has to be given of that. Suppose for example that somebody owes me a note and deed of trust and I in turn turn it into the bank under these facts and borrow money against it—half its value or whatever I can borrow on it—in that case no notice has to be given at all under the present law, does it?

MR. LANDELS: No.

MR. BOHN: That is true under this too?

MR. JOHNSON: No notice unless intended to be a security interest—

MR. LANDELS: Yes, but you don't have to give notice.

MR. JOHNSON: It's under the act but you don't have to file because it's a pledge. You don't have to file on a pledge transaction under this act just as you do not have to file today.

MR. LANDELS: The only significance of being under this act are provisions governing the event of the borrower's default.

MR. LANDELS: (c) provides that it shall not apply to the assignment of a lease of real property or of rentals if given in conjunction with a deed of trust or mortgage. It would apply to any other assignment of rentals. Subdivision (d) covers all of the so-called artisan's liens dependent on possession, garageman's liens, repairman's liens, jeweler's liens, all of those statutory liens. In other words, this wouldn't affect any of the statutory liens given to persons who repair property, etc. It wouldn't apply to an assignment of wages or equipment trust covering railway rolling stock. It wouldn't cover a sale of accounts which were sold as a part of the sale of the entire business; to a right represented by a judgment, to a setoff; to the rights of a person in an instrument cashed or handled for collection or to a loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy.

MR. BOHN: I have several questions in connection with this section, Mr. Landels. First, I take it that because they are not excluded by this section that this bill would apply to a pawn transaction, a pawnbroker?

MR. LANDELS: That's a good question. Yes, the foreclosure provisions as it reads now would I think, yes.

MR. BOHN: I don't recall the details.

MR. LANDELS: Where you take title by _____, where you perfect your security interest by taking possession, like a pledge, the only provisions of this act which would have any significance are those relating to foreclosure which appear at the end.

MR. BOHN: The thing that bothers me is that my recollection of that pawnbrokers act is that there are certain special provisions right in the act by which the pawnbroker gets title in the event of default and there is special notice requirement under that act. I've forgotten the details of it but in substance after a certain period of default, which is pretty well spelled out, then the pawnbroker can give a notice and I think it also must be certified mail, etc., and then after the expiration of a certain period of time from that notice which period of time is not particularly long the statute provides that he then becomes the owner and can thereafter sell it. However, the statute also provides that surplus obtained from that sale must I think be held by him and delivered to the owner of the item pledged. Now, there are some notice provisions involved in there also which have caused some difficulty and I'm just wondering if they're consistent with your notice provisions in this act.

MR. JOHNSON: I think we ought to take another look at that act, Ed, to make sure that they are consistent.

SENATOR GRUNSKY: Maybe I misunderstood—did Mr. Landels say in answer to your question that because it's not in the excluded transactions that therefore pawnbrokers will come under the provisions of this act?

MR. BOHN: Yes.

MR. LANDELS: The only way it might, Senator, he takes that as a pledge and under the foreclosure provisions here you have to give five days' notice before you can sell.

SENATOR GRUNSKY: I see, then this picks up pledges and all other security transactions and even though there's a pawnbroker, the Pawnbrokers Act will still be in effect.

MR. LANDELS: Yes. Take a look at Section 5203, Mr. Bohn. I'm not sure the Pawnbrokers Act is in there or not, I think it is.

SENATOR GRUNSKY: The only question I'm raising is that unless you're repealing and completely superseding the Pawnbrokers Act why would not logically pawnbrokers be exempt because you want to simplify it, you want it so attorneys and other people can go to one act and know what's covered but if you have to read two acts to know what to do, you're defeating the practical purpose of the Uniform Act.

MR. JOHNSON: To the extent that the Pawnbrokers Act is a regulatory statute, Senator, and my impression is that for the most part it is a regulatory act, this would not affect it by virtue of a specific provision, which is 5203(2). To the extent that the Pawnbrokers Act as a regulatory statute does not cover certain phases of the pledge transaction this would cover it. For instance, if the Pawnbrokers Act is silent on foreclosure, this would pick it up.

SENATOR GRUNSKY: Well, why wouldn't the logical way then be to have repealers of those sections of the Pawnbrokers Act which outline the pledge procedures and the foreclosure procedures and have

those superseded by this so you have uniformity without overlapping or duplication, retaining, of course, the regulatory provisions, which are recognized without mentioning.

MR. LANDELS: Is the Pawnbrokers Act in the financial code? Answer: Yes. It's covered then by Section 5203, which says, "a transaction, although subject to this division, is also subject to the Industrial Loan Law—certain sections of the Civil Code that's your automobile conditional sales, etc., on page 16 of Green Book. So if the Pawnbrokers Act, which I do not know, governs the foreclosure, it would control over this act.

SENATOR GRUNSKY: Then if you're a business man, you will have to always then doublecheck and cross-reference wherever you're under any one of these enumerated regulatory or special act.

MR. LANDELS: Just as you do today.

MR. BOHN: Is there any doubt in your mind that this would exclude those conflicting provisions, assuming they are conflicting, in the Pawnbrokers Act?

MR. LANDELS: The Pawnbrokers Act would control where there's any conflict—

MR. BOHN: Well, they have much higher interest rates, of course, and therefore, much different types of protection.

MR. LANDELS: Yes, just like Section 2982 of the C.C., you have conditional sales of automobiles. That section controls over anything in here insofar as there is any difference.

MR. BOHN: Another question, Mr. Landels, in connection with subdivision (e), Section 5103, referring to wage claims. Now in cases where a person borrows money from one of these finance companies and gives a wage assignment as security for his obligation I take it that that would not come within this statute, and therefore no notice need be given or anything of that sort. Is there a special reason to exclude those claims?

MR. JOHNSON: It's covered by the Labor Code, Mr. Bohn.

MR. BOHN: So, you feel it's not necessary to put it in here. In connection with subdivision (j) you refer there as an exclusion to the rights of a person in an instrument cashed or handled for collection whether or not he makes an advance. I could see the right of setoff for example in the case of a check or something of that sort for a right of charge-back but doesn't that particular exclusion go further than that? I'm not saying it shouldn't, I'm just asking. In other words, I don't recall the exact definition of instrument in this bill but suppose the case where a promissory note or a check is turned over to someone for collection, then—what is it, your theory that he's acting as the agent of the owner of the paper and therefore there is no necessity of filing notice.

SENATOR BEARD: Or is it only his rates, Mr. Bohn, his collection fee rates that are protected rather than the—

MR. BOHN: You mean the rights of the collector? Ans.: Yes.

MR. JOHNSON: I think the answer to that is this, when a bank or anybody cashes a check, he acquires an interest in that check which may be deemed to be a security interest if he hasn't advanced the whole amount and purchased the check outright and to the extent that

it would be a security interest, it's excluded from this because by custom and usage you just proceed in a different way in the realization of an item of that kind.

MR. BOHN: Suppose for example there were a number of promissory notes if they're included within the definition of the word "instrument," just simply turned over to anyone for collection, there would be no notice given because actually there's no security transaction involved, is that basically what we're talking about here or am I missing the point?

MR. LANDELS: This is really put in out of an abundance of caution to prevent the contention if somebody cashes a check that they can't enforce that check without going through this statute because in effect they've got a security interest in that check. This act by its very nature can't apply to that sort of situation and this is really put in just to make sure that that point isn't raised.

MR. BOHN: Suppose that a person in business obtains a lot of commercial paper of one type or another and then he turns it over to a person simply for collection, that person let us say is charging a third or whatever the fee is for that collection, the purpose of this is to say that this transaction is just not included.

MR. LANDELS: That's right.

MR. BOHN: And so the collector would not lose whatever lien he has on the paper for his fees.

MR. LANDELS: What this in effect says is that if in that kind of situation there is a certain element of security interest involved, this act has no ramification.

MR. BOHN: In other words, even though it were in the form of an assignment, which would probably be the usual thing because the collector goes out and proceeds in his own name as against these accounts or notes or whatever they might be and I presume that this particular thing is limited to notes or commercial paper of some type because you use the word "instrument." There is actually an assignment of those things for purposes of collection in the document if there is one or in the arrangement the collector is entitled to keep, say a third, for his fee. That then is a security transaction of one sort or another because he is entitled to keep the proceeds up to the amount of his fee; that transaction is not affected.

MR. LANDELS: That's right.

MR. BOHN: Even though that in effect is a diminution of a person's accounts receivable on his financial statement whereas if he sold them outright, it would be necessary to give a notice.

MR. LANDELS: Not if they're instruments.

MR. BOHN: Oh, that's accounts receivable, I'm sorry.

MR. LANDELS: Now the next section is a section of definitions, I don't think there's a great deal of point in going through that except that we —

MR. BOHN: I'd like to ask a question. Couldn't you give us briefly the difference between chattel paper, documents, instruments and negotiable documents?

MR. LANDELS: That's a tough one, I wish I knew what to say (laughter). A document is an instrument which is issued by a bailee and represents the goods like a warehouse receipt, a bill of lading or

an instrument of that kind, which is defined in (1). One thing this act does which would be very helpful to the banks, millions and millions of dollars are being lent today in this state on gin tickets, for example. A gin ticket today in law has no legal standing as far as I know of any kind. The same is true of compress receipts or dock warrants. This act would make them documents of title and facilitate lending on them. "Document" is defined as a bill of lading, a warehouse receipt, etc., p. 5. Now chattel paper covers such things as conditional sales contracts where there is an obligation to pay money plus a security interest, the purchase money chattel mortgage is the best example of what is known as chattel paper, it is a term now which is in very general use. It means a writing or writings (page 4) which evidence both a monetary obligation and a security interest in or a lease of specific goods.

MR. BOHN: Chattel paper would then be the collective documents.

MR. LANDELS: That's right.

MR. JOHNSON: For most purposes, under this act, chattel paper would be conditional sale contracts.

MR. BOHN: Wouldn't it also extend to chattel mortgages accompanied by promissory notes?

MR. JOHNSON: Yes, but the great bulk of the paper would be conditional sales contracts that would come under the definition "chattel paper."

MR. LANDELS: An "instrument" means a negotiable instrument or a security or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of type which is by custom and usage transferred by delivery with any necessary indorsement or assignment. By and large these are negotiable promissory notes.

SENATOR GRUNSKY: Well, then the distinction between "document" and "instrument" then is that an instrument refers to money and document refers to some type of goods.

MR. LANDELS: That's right. A document is evidence of receipt by bailee that he holds goods subject to your order.

MR. BOHN: That brings up the next question. Where you can negotiate those documents then you have the negotiable document which is distinguished from the instrument.

MR. LANDELS: That's right.

MR. BOHN: In other words, the negotiable document is a document which can be transferred by negotiation representing, however, the right to obtain possession of goods.

MR. LANDELS: That's right.

MR. BOHN: A negotiable instrument is itself the promise to pay.

MR. LANDELS: It's evidence as to the right to the payment of money.

MR. JOHNSON: But it goes farther, Ed, an instrument might be a stock certificate under this definition or a bond or something like that.

MR. BOHN: It says, "which evidences the right to the payment of money"—now would a stock certificate evidence that right? A bond, of course, would.

MR. JOHNSON: It says, "or a security" and then if you go to the definition of "security" that covers stocks and bonds. In other words, all instruments aren't security but all securities are instruments.

MR. BOHN: Without meaning to quibble about language, do not the words "which evidences a right to the payment of money" limit the thing?

MR. LANDELS: Maybe there should be a comma in there.

MR. JOHNSON: It could be construed to go back to security.

MR. LANDELS: There are two or three definitions in here which every lawyer will recognize as being very helpful. One is the definition of chief place of business, which has been a great problem for many years. There is a question always that arises as to whether the chief place of business of a corporation is the chief place of business named in its articles or its chief place of business in fact. I don't think that question has ever been resolved. This definition would define it as the chief place of business in fact. It ordinarily means the place in which the executive offices of the business is located and in the case of a corporation, it may or may not be the chief or principal place of business specified in its articles. I think everybody has been up against that problem at various times.

MR. BOHN: You have defined the word "debtor" as I understand it to mean both the person who owes the obligation and the person who owns the collateral if the context of the bill itself requires it, is that correct? That's on page 5, subdivision 8.

MR. LANDELS: Yes, that's where one person puts up collateral for another person's debt.

MR. BOHN: He's certainly not a true debtor in the presently accepted sense of the word.

MR. LANDELS: No, but he's entitled to the same protection as the owner as far as collateral is concerned.

MR. JOHNSON: I don't think he's referred to as the debtor under this language, Ed. That is the person who permits his property to be hypothecated by somebody else. I don't think he's referred to as the debtor here.

MR. LANDELS: Yes, he is. Where the debtor and the owner of the collateral are not the same person the term "debtor" means the owner of the collateral in any provision of this division dealing with the collateral.

MR. JOHNSON: Well, yes, but not with the payment of money.

MR. LANDELS: No, such as the provisions imposing certain duties on the holder of the collateral which appear later. He's entitled to that protection as though he were the debtor.

MR. BOHN: And he is distinguishable from an account debtor who is the person who owes on the account, that's subdivision (b) on page 4?

MR. LANDELS: That's the definition of an "account debtor."

MR. BOHN: In other words, the words "account debtor" are simply a refinement?

MR. LANDELS: That's right.

MR. BOHN: A person owes on an open book account, let us say, he is an account debtor. If to secure that obligation he has taken collateral that belongs to someone else and is using that collateral as security, then he is also a debtor within the meaning of "h" and so also would be true in the case of the owner of the collateral, is that correct?

MR. LANDELS: I've lost you, John. An account debtor refers—here a merchant has a lot of accounts and he assigns those as security—the account debtors there are the people who owe him.

MR. BOHN: But the debtor to the lender is the one who is the assignor. I'm sorry I confused that.

SENATOR BEARD: Do you think, Mr. Landels, that there should be in this definition a statement that the account debtor is the one who is obligated to the obligor. In order to distinguish it from subdivision "h," is any further language needed?

MR. LANDELS: I don't think so. I think the term "account debtor" as a matter of practice is only once used in the act and that's the provision which permits him to pay his creditor until he has notice that the account has been assigned. Off hand, I can't think of any other place it is used.

MR. BOHN: In connection with these notice provisions which are subdivisions "r," "s," "t," particularly as read also with subdivision "u," I'm thinking in terms of notice to an organization or notice to a corporation. Now, do I understand the substance of these sections or other sections in here—let's get over to page 8—"Notice or a notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual then in charge." In other words then we are saying that the employee of the corporation who should have gotten notice if the organization was efficient—in effect, that is official notice—even though he might not be an officer.

MR. LANDELS: Yes, we think that's a very important provision because today—suppose Security National Bank gets notice of something—and notice becomes very important in security transactions. When does Bank of America get notice? This, we think is a workable and a fair statement as to when such an organization gets notice. Such an organization gets notice when the fact is brought to the attention of the individual man in charge of the transaction, and in any event, from the time it would have been brought to his attention if the organization maintaining branch offices at the time when it would have been brought to his attention if the personnel of the organization at such branch office had exercised due diligence.

MR. BOHN: In other words, a letter directed to General Motors Corporation at a specific office which is handling the transaction although not directed to a particular individual is actually effective as against that corporation at the time when it should have gotten into the hands of the individual responsible, is that correct?

MR. LANDELS: That's right.

MR. BOHN: Now we don't know what that time period is, a day?

SENATOR GRUNSKY: It would be a question of fact as to just how long it takes for a mail clerk to distribute the mail in the normal course of business as any court or fact finding body would presumably have to determine that. That's what you contemplated, isn't it?

MR. BOHN: How about notice to an insurance company—of course, they're not involved—I'm just thinking in terms of some of those big organizations that have very complex mail systems.

MR. LANDELS: That's up to them. This puts the burden on them to see that their employees exercise due diligence in getting it to the right person.

MR. LANDELS: 5105 defines a "general intangible" and in substance this act would make no change in present law governing the assignment of the general intangible as security as covered by Section 855 of the Civil Code—you simply do it by an assignment as you did before. Now 5108 draws a distinction between four types of goods.

SENATOR GRUNSKY: Might I interrupt. A point of drafting, why do you have 5104, 5105 and 5106—one you have definitions as subparagraphs—then 5105, 5106 are separate—is that because there's no change to be made in the text in 5105 and 5106? I notice in 5104 it says, "In this Division unless the context otherwise requires" these definitions apply, but in 5105 and 5106 you give them separate sections—I'm just curious for future guidance on drafting legislation why you used separate sections for definitions in 5105 and 5106.

MR. JOHNSON: I don't think there is any good reason, Senator. I think we were following the official text, it might be that they should be included in the other.

SENATOR BEARD: They went all the way to "z." They ran out of letters. (Laughter.)

MR. LANDELS: I think that's as good a reason as any. The most important definition in 5108 is the definition of consumer goods. Consumer goods are defined as those which are used or bought for use primarily for personal, family or household purposes. The significance of that definition becomes apparent later—the most important significance is that you need not file a notice of the security interest in consumer goods—just as in this State now you do not file notice of a conditional sales contract on a refrigerator or furniture—or anything else bought for personal, household or family purposes. In addition to that, certain protections are given the debtor in case of the security interest on consumer goods that is not given to the other debtors, one being a prohibition of add-on clauses and the other a provision to the effect that any waiver of defense by the purchaser of consumer goods in favor of an assignee is ineffective. In other words, this act provides and there is some criticism of that in some banking circles, that if the purchaser of consumer goods waives any defense against an assignee of the contract that waiver is void. As a matter of fact that was the chief reason that banks oppose this. We think to a considerable extent that's probably more in California today anyway. We think it's good despite the fact that the assignee of the conditional sales contract or the chattel mortgage may find that he can't collect on it.

MR. BOHN: Were you going to go back to 5106 and 5107 or should I ask questions on that now?

MR. LANDELS: No, go ahead.

MR. BOHN: In consideration with 5106, the definition of a "purchase money security interest" as I understand it, subdivision "a" is the normal situation of where the seller of the goods retains the title or takes back a chattel mortgage to secure the unpaid balance of his purchase price. In connection, however, with subdivision "b" does that extend to a situation of where, for example, I would go to a bank

and borrow money to buy an auto and then give the bank—just borrow cash, the paper is not endorsed by the seller of the automobile and then give the bank a chattel mortgage, would that be a purchase money security interest within the meaning of this section?

MR. LANDELS: And you use the money to buy the auto?

MR. BOHN: Yes.

MR. LANDELS: Yes.

MR. BOHN: Then, of course, the question that I've asked you earlier other times, what about the question of defenses? Suppose the car doesn't run right? As I understand the general situation and I don't know later on what this bill may provide—if you give back or take a conditional sales contract for example, on an automobile from the seller of the car and the car is defective you have a defense on that contract to the extent that you can prove it is defective or that there was fraud in the transaction or something else. Now, then if you put the banker in the same position as the seller of the vehicle, is he assuming that obligation as to defenses?

MR. LANDELS: No, I think the answer would be that the defense would be available—5206, which is the part I've just mentioned which states "An agreement by a buyer of consumer goods as part of the contract for sale that he will not assert against an assignee any defense or setoff arising out of the sale is not enforceable by any person. So it has to be a waiver by the buyer in his contract of sale that he won't assert any defense. The case which you put as far as the bank is concerned it's just a straight loan. The only significance of its being a purchase money security interest is that it's subject to priorities—the holder of a purchase money security interest is given a certain priority even though he doesn't file for 10 days on the theory that the creditor is getting as much as he's losing when a purchase money transaction is—

MR. LANDELS: But if he buys a Frigidaire—we don't use automobiles because autos are governed by the Motor Vehicle Act, which is separate from this act except when they're inventory in the hands of a dealer. But if a person buys a Frigidaire from a dealer and then includes in his contract a provision that if this is assigned to a bona fide purchaser I agree not to assert any defense which is rather customary. This act says that waiver is void. If there's no motor in the Frigidaire he can assert that as against an assignee of the contract.

MR. BOHN: I can see the situation as to—in the normal conditional sales arrangement and I can also see it as to the situation of where there might be a related company, indistinguishable from the seller—as far as office space, etc. is concerned for financing or other reasons in effect this transaction would look as if it were a loan with the property purchased being given as security, but the thing that disturbs me, however, is going to what we might loosely call an independent lender who has no affiliation whatever with the seller of the goods and borrowing money from him and then going and using that money—well, then, if we are actually not only for the purpose of this act but for the purpose of other acts making that lender a purchase money mortgagee. Is that what the banks really want?

MR. LANDELS: I think so.

MR. BOHN: Maybe I'm confused but in the case of real property of course, there's no right to a deficiency judgment on a purchase money mortgagee.

MR. LANDELS: Although there's one case that came up in Stockton and the district court of appeal implied that in your situation it was a purchase money mortgage.

MR. BOHN: From the standpoint of this section of the code you actually intend then that the lender who advances money to a borrower for the purchase of specific goods be placed in the same position in substance as the seller of the goods himself insofar as his security is concerned. That's the intent of this section?

MR. LANDELS: It only becomes important in connection with the time you file notice, I think.

MR. BOHN: I don't read this to mean that the limitation of this definition is just for this division.

MR. LANDELS: Oh yes, if not, it should be.

MR. BOHN: Well, that's the question, it says, "A security interest, etc.," "Taken by a person who makes advances, etc."

MR. LANDELS: I think you've got a good point there.

MR. BOHN: Well, that's what I'm wondering—in other words, I just wonder if that language wouldn't go considerably beyond this act?

MR. LANDELS: That point is well taken. Are there any questions on 5107?

MR. BOHN: I'm not quite sure I understand the reason for that section. I take it what the purpose of the section is is to provide that when you're talking in terms of after-acquired property being covered by a security instrument there must be some new value or some new consideration given. Why is it necessary to make that distinction?

MR. LANDELS: It's an attempt to get around some of the decisions under the Bankruptcy Act which knock it out as a preference. What that is intended to cover is the situation where a lender extends value now to enable the debtor to acquire some property and that property is to become security for the debt—he acquires that property two months later as a result of this credit arrangement which you set up—two months later he goes into bankruptcy. Under certain decisions the bankruptcy court would hold that was a preference and void, having been taken for an antecedent debt.

MR. BOHN: Even though the security was in fact issued?

MR. LANDELS: This says that if the security arrangement was entered into for the purpose of enabling him to acquire that property the money was given to him to enable him to acquire that property and it was in fact acquired in that fashion it would not be deemed security for an antecedent debt.

MR. BOHN: But would be considered the same as if the property were acquired right then and there?

MR. LANDELS: Yes.

MR. BOHN: There's a negative effect to this section too, isn't there? In other words—

MR. LANDELS: Now whether that will stand up under the Bankruptcy Act, nobody knows, some people think it will and some think it won't. It's a fair rule.

MR. BOHN: This is not intended to cover the situation of where you have a security instrument and that security interest at the moment also covers after-acquired property. This doesn't cover that situation. I don't want to use a furniture contract because I understand those are excluded by virtue of this consumer goods section, but take a security instrument with a herd of cattle or something of that sort and I assume that those instruments provide that the young of the animals are also included in the security. To some extent it's after-acquired property. This section is not designed to hit that situation at all if I understand what you're saying. This is limited to a situation where the money is advanced and the creditor in effect is relying upon the honesty of the borrower to acquire the property in accordance with the agreement or he may hold the actual funds—that's all you're trying to take care of here, is that correct?

MR. LANDELS: This would cover that situation. This covers where it is acquired in the ordinary course of business.

MR. BOHN: Or pursuant to agreement?

MR. LANDELS: Yes. In other words, someone is financing a cattle herd and the security agreement covers any additions to the herd. This would say that the normal additions to the herd would not be deemed security for an antecedent debt.

MR. BOHN: Is that true under existing law? Does this come within those bankruptcy cases you're talking about—the herd situation?

MR. LANDELS: Well, I couldn't answer that specific question but there's always a question today under the Bankruptcy Act where you have an after-acquired property clause whether or not that after-acquired property is acquired within four months of bankruptcy it would be deemed acquired for an antecedent debt.

MR. JOHNSON: The chattel mortgage statute today specifically contemplates after-acquired property and protects it.

MR. BOHN: But all you're trying to do here is to say that it dates back in priority in effect and as to good faith and effect as to the time the money was originally advanced.

MR. LANDELS: If it's acquired in the ordinary course of his business or by virtue of this money which has been advanced to him as part of the contract.

MR. BOHN: So that if the contract itself referred to items which would not normally be acquired in the ordinary course of business nevertheless it would be covered by this section.

MR. LANDELS: That's right. I think that's correct. Are there any questions on the definitions in 5108?

MR. BOHN: That is intended to be all inclusive I take it.

MR. LANDELS: Yes.

MR. BOHN: In other words, if something isn't one thing it's another within this definition. For example, in terms of equipment, law books in the law would be equipment within this definition.

MR. LANDELS: Those definitions are of primary importance in connection with loans on inventory.

MR. BOHN: I have one question on subdivision 3, if I may, Mr. Chairman. (5108) Reading the items there under "Farm Products" then you go on to say in the middle of the paragraph, "and if they are in the possession of a debtor engaged in farming." Suppose they're not?

MR. LANDELS: I think the only significance of that definition lies in whether or not a purchaser in the ordinary course of trade takes free of the security interest; a purchaser in the ordinary course of trade from the merchant or a manufacturer takes free of any security interest on the inventory. The purchaser from a farmer would not—in other words if there's a crop mortgage filed, the purchaser of that crop wouldn't take free of the crop mortgage. The only reason for the definition of "farm products" is to take it out of the category of "inventory" as long as they're in the possession of the farmer. If those farm products get into the possession of a wholesaler then they become inventory—the purchaser from the wholesaler would take free of any security interest.

MR. BOHN: In other words, the minute these items leave the hands of the person who produced them, the operating farmer, they are no longer included within the definition of farm products.

MR. LANDELS: That's right, they become inventory in the hands of somebody.

MR. BOHN: Even though in fact they are an item you normally expect to get from a farmer. In other words, later on here then you exclude farm products from certain provisions.

MR. LANDELS: We don't exclude them but the definition of inventory acquired in the ordinary course of trade of inventory takes free of any security interest—it's automatically excluded from that provision.

MR. JOHNSON: I think that's the only significance it had.

MR. BOHN: I have one more question on the previous section that I forgot to ask—going back to the question of document where you're talking about goods and that type of thing, where you say it covers the goods in the possession which are either identified or are fungible portions of an identified mass. What would that include?

MR. LANDELS: The grain in a warehouse.

MR. BOHN: I don't understand the word "fungible"—

MR. LANDELS: That's when it gets all mixed up together; grain in an elevator. In other words, you might have the grain of a dozen farmers in one elevator and you would segregate it by weight.

MR. BOHN: And the documents would say "so many bushels or so many tons or whatever it might be of wheat" even though the property itself as to the individual person is not segregated.

MR. JOHNSON: Yes, that's right.

MR. LANDELS: 5109 merely says the definition is sufficient if you can reasonably identify the property. 5110 would make the Bulk Sales Law inapplicable to the creation of a security interest, however, you would in case of inventories, as I pointed out earlier, file a notice at least 10 days before your security interest became effective which would be tantamount to notice given under Section 3440. As a matter of fact there was a bill accompanying this bill which rewrites 3440 to make it tie in more closely with this act if it were passed. I think we've covered 5111 in response to one of your earlier questions, John. That states that when somebody other than the debtor owns the collateral he's entitled to the various protections afforded the debtor in relation to the collateral.

MR. BOHN: I just want to mention subdivision (b) at this time, because I have some questions on Section 5505 when you get to it. Maybe it's a good time to ask them now. As I understand the effect of that section, the secured party in the event there's a default, can go ahead and give notice and if the debtor does not object to it, may in effect keep the collateral in satisfaction of the debt. It's a cross-reference from Section 5111 to Section 5505 on page 50. Under subdivision 1, if the debtor's paid 60 percent of the obligation then as I understand it, the collateral is disposed of by notice and sale. Is that correct?

MR. LANDELS: It has to be within 90 days if it's consumers goods. You just can't hang on to it indefinitely.

MR. BOHN: Is this all consumers goods in this section?

MR. LANDELS: No, (2) is consumers goods—it would cover anything. You find a provision similar to (1) in these acts for the protection of consumers, which I think the Assembly has before them now, sponsored by the Council on State Government—a provision similar to (1). This is in the Uniform Commercial Code.

MR. BOHN: Now (2) creates something similar to the present pawnbroker situation, doesn't it, insofar as title is concerned, except that in the case of the pawnbroker, the person has to pay but in this case—do I understand this gives the option to the lender or the purchase money mortgagee to give notice to the debtor and then if the debtor doesn't object within 15 days thereafter, the secured party may simply keep the goods.

MR. LANDELS: Yes, and waive a deficiency.

MR. BOHN: This also applies to secondary security interests. If there were several secured interests on the same security, the holder of the prime security interest—the first mortgagee—then also would give notice to the holders of the subordinate securities as well as the owner of the collateral and the debtor himself.

MR. LANDELS: That's right. If they requested notice.

MR. BOHN: Suppose they haven't requested it?

MR. LANDELS: Then, they wouldn't have to give notice.

MR. BOHN: In other words, the instrument itself may provide for this forfeiture unless there is a special request in the instrument for notice?

MR. LANDELS: No. You have to give the notice to the debtor and if any second mortgagee has filed with the holder of the first mortgagee the request to be notified of any foreclosure then they have to give him notice, too.

MR. JOHNSON: You would rarely have that situation in consumer goods though.

MR. BOHN: This apparently applies to all collateral.

MR. LANDELS: (2) applies to all collateral.

MR. JOHNSON: I don't know how important the provision is, but you can have cases in which the collateral at that time can't bring any price at all—it may bring a good price later. If you sell it out now you get a big deficiency against the borrower and the borrower wants you just to keep it and waive the debt it's probably to everybody's advantage.

MR. BOHN: Do we specify what has to be in that notice? I could see a debtor in default just receiving a routine notice saying "in ac-

cordance with the provisions of Section 5505, etc. you are hereby notified that unless so and so happens to the contrary we will take possession of these goods." The person being in default anyhow would probably just ignore it.

MR. LANDELS: Probably, just as they do today.

MR. BOHN: There's no requirement, for example, that the notice specify the alternative of requiring public sale.

MR. LANDELS: There might be some point in limiting this to consumer goods—I don't know. They tell me the average repossessed consumer goods, so-called soft goods, bring about 30 percent of the unpaid balance of the debt; hard goods may be around 50 percent. In 9 cases out of 10, the borrower is a lot better off if they just keep the goods and forget it.

SENATOR BEARD: What would happen in this situation—where I bought \times number of goods under a conditional sales contract—furniture or something and had quite an equity in it and went to Pacific Finance or some other company and they recorded their security instrument, they would have no protection insofar as notice under this, would they? In other words, unless they specifically asked the original conditional sales contract holder for notice in the event of a deficiency or a sale, they would get even by filing, they would get no notice. Does this take away anything they now have?

MR. LANDELS: I didn't get your question.

MR. JOHNSON: No, it doesn't.

SENATOR BEARD: Well, I think I got the answers.

MR. JOHNSON: There's no obligation under the law today to notify junior lienors of personal property—no provision for them to request notice or anything that I know anything about.

MR. BOHN: In the case of foreclosures in court, however, you would notify them, wouldn't you?

MR. JOHNSON: I think you would.

MR. LANDELS: I don't know whether you would in the case of personal property.

MR. JOHNSON: I think that you would.

MR. LANDELS: You have no notice on a conditional sale. That's one important aspect of this act. Conditional sales contracts under this act are treated as a security instrument just as though they were a chattel mortgage except that they are a purchase money security interest.

MR. BOHN: You have a straight forfeiture provision in substance haven't you in this Subdivision (2) of 5505?

MR. LANDELS: Yes, we hold no particular brief for this portion. It's in the Uniform Code and we incorporated it and the point which you raise that the burden is put on the borrower to reply may be well taken. It does improve the present law from the standpoint of the buyer under a conditional sale contract because under present law, more often than not, the property is repossessed and nothing is said or done, and that's the end of it. This does require notice if you intend to declare a forfeiture and permits a forfeiture only in certain cases.

MR. BOHN: What effect, if any, would this forfeiture type thing have on general creditors?

MR. LANDELS: It wouldn't have any.

MR. BOHN: In other words, there would be no sale.

MR. LANDELS: If there's any equity, the borrower is going to say, "Go ahead and sell." The only advantage to this from the standpoint of the borrower is that if there isn't any equity, he can avoid the deficiency judgment and the seller avoids the expense and trouble of a sale.

SENATOR GRUNSKY: I think what you're going by is that the ignorance of the average buyer, he's just not going to know and he's going to ignore the notice, but you're confronted with that unless you make everything in large, black, bold type and make them sign in two or three places after reading it and that's the thought with the inherent law of this, is the ignorance of the buyer.

MR. JOHNSON: That's really what you were talking about, wasn't it?

MR. BOHN: Yes, that was one of the items.

MR. LANDELS: However, that's a provision which could be omitted without disturbing the framework of the act at all.

MR. JOHNSON: The existing law doesn't give the buyer the value that this gives him.

SENATOR GRUNSKY: That's the tragedy of most of these, through his ignorance he's always stuck with a deficiency and frankly, I know all of us as practicing attorneys see the hardship that it works and this gives them one out which I think might have some advantage.

MR. JOHNSON: Mr. Bohn, to go back to the points which you made in connection with 5106, as to the significance of the purchase money security interest, this is one section that has a bearing on it, because 5505 deals with purchase money security interests.

MR. BOHN: Only?

MR. JOHNSON: Sub 1 does and sub 2 does in some cases.

MR. BOHN: To clarify my thinking, subdivision 1 also applies to the case of a loan doesn't it?

MR. JOHNSON: If the loan creates a purchase money security interest, yes. If it creates a purchase money security interest under 5106.

MR. BOHN: I see. Subdivision 1 is limited to purchase money situations?

MR. JOHNSON: Yes, by its terms.

MR. BOHN: If the debtor has paid 60 percent of the cash price in case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods.

MR. LANDELS: The right applies in any case of consumer goods.

MR. BOHN: But it is limited to consumer goods?

MR. LANDELS: That's right. If he's paid 60 percent, he may have an equity, that's the point, you have to sell out and pay him the balance and not just keep the goods.

5113 is a pretty complicated section. I don't think there's very much point in discussing it here because it involves conflict of laws where a security is taken in another state and then the goods are brought into this State. Its chief value would be if all the states adopted the Uniform Code, then it would be of considerable value. How valuable it is in the absence of this adoption by other states, nobody knows.

MR. BOHN: Until that adoption occurs, this would really limit the effectiveness of this act in cases where the headquarters of the business was in some other state, because as I understand it, regardless of the adoption of this statute, the law of the place of the headquarters office applies.

MR. LANDELS: That's right, in the case of an assignment of accounts receivable, the law of the state in which the records of the accounts are kept, controls, which is the only practical rule.

MR. BOHN: So in effect you are excluding from the operation of this bill that type of situation. You state also that the ruling of the courts in that state as to conflicts of law also applies.

MR. LANDELS: For instance, if there's a demand on an accounts receivable of a firm doing business in Salt Lake City, and a lot of the account debtors are in California, but all your records of accounts are kept in Salt Lake City, the law of Utah controls.

MR. BOHN: Even though, in fact, the loan might be made here.

MR. LANDELS: The accounts might be here. Yes.

MR. BOHN: The account debtors are here.

MR. LANDELS: Probably the only practical rule—nobody knows what the rule is today. That brings us to Part 2. Subdivision 5201 is simply a saving clause to the effect that nothing in this act would validate any practice which is illegal under any statute relating to usury, small loans, pawnbrokers, personal property brokers, conditional sales or the like.

5202 simply provides that provisions of this act are not effective as to whether the title of the collateral was in the secured party or in the debtor.

MR. BOHN: The substance is to cover conditional sales contracts.

MR. LANDELS: Yes, and it's to cover any technical distinction between the fact that the lender might have the title. If he has the title as security, that is immaterial as far as this act is concerned.

5203 simply provides that a security interest is not enforceable unless the creditor has possession of the collateral or the debtor has signed a security agreement describing the collateral. Then subdivision 2, which we read previously regarding the saving clause relating to any contrary provisions in any of these special statutes which are designed for the protection of the public.

MR. BOHN: Question. As to subdivision (b) particularly with regard to timber, under the present practice, are loans made against uncut timber as personalty?

MR. LANDELS: There aren't. I think it's confusing because timber as long as it's standing, is real property and should be treated as real property. It would be my suggestion that that phrase in Section 5203(b) beginning with "or covers oil, gas or minerals be extracted or covers timber to be felled, a description of the land concerned," be eliminated, it's confusing. Theoretically you could make a security agreement to cover timber after it was cut.

MR. BOHN: In other words, then it is your suggestion that this special reference to oil, gas and minerals and timber simply be taken out?

MR. LANDELS: That's my personal suggestion. 5204 simply states the general rule relating to after acquired property and the times

when a security interest attaches. You can't attach until three things happen if it's a security agreement of some kind, and the debtor has an interest in the property. That I believe becomes important with the question of priorities. That is, until the lender has given some value in the form of either a commitment or otherwise, the debtor owns the property.

MR. BOHN: As to inventory, you have some special rules?

MR. LANDELS: The security interest does not attach until 10 days after you file your notice. In other words, if you are making a loan on inventory, you must file your notice and wait 10 days. During that 10 days, you don't have anything. That gives your unsecured creditors, if they want to, an opportunity to attach or take their own security interest. That is one respect in which this act differs from the Uniform Code.

MR. BOHN: What about subdivision (a), "until a secured party takes possession"?

MR. JOHNSON: If the goods were warehoused and warehouse receipts pledged, then you don't have to wait the 10 days.

MR. LANDELS: Which you don't have to do now.

MR. JOHNSON: Yes, it would be the same as today.

MR. BOHN: It says, "a nonpurchase money security interest in inventory shall not attach until either the secured party takes possession or the 10-day period has elapsed." Suppose the situation where there have been some open accounts or something of that sort and the lender or supplier wants security. The security instrument is signed and at the time of the signing of the security instrument possession of that inventory is physically delivered to the lender or the obligee, would that then start the priority as of that minute and in effect remove the priorities of other creditors?

MR. LANDELS: That's a pledge. You wouldn't have to file or anything. It would be the same rule as it is today.

MR. BOHN: Suppose it is some sort of article which is comparatively small so that supplier is worried about the solvency of the debtor. He takes one of these security instruments and by agreement between himself and the debtor just puts the stuff in some trucks and moves it two blocks to another warehouse or segregates it in some adjacent property owned by him or the bank or somebody else. That effectively then cut off the rights of other creditors to those goods. Is that correct?

MR. LANDELS: That would put him in bankruptcy and it wouldn't be any good.

MR. JOHNSON: Within four months it's a preference.

MR. LANDELS: Within four months it wouldn't be any good. Just as today, any creditor can go in and attach and have the sheriff take the goods and have them put in a warehouse, but if they're unsecured creditors they can put him into bankruptcy and then of course that's no good.

MR. BOHN: Suppose it was not a pre-existing debt, but it was the payment of cash.

MR. LANDELS: Then it would be good, but then the debtor has the cash.

MR. BOHN: If he takes off with it —

MR. LANDELS: That sometimes happens. I don't know how you can stop that.

MR. JOHNSON: As a practical matter, the debtor doesn't take the stuff, he puts it in a warehouse or something to insure control of it. I mean the bank would never go out and take physical possession and bring it down to the vaults of the bank and deem that that was good possession.

MR. BOHN: On this subdivision (2), you're going to reconsider then subparagraph (b) in the light of your reconsideration of subparagraph (b) back over in 5203.

MR. LANDELS: Yes, I think here it's probably all right.

MR. BOHN: This in effect is the present definition when that becomes personalty.

MR. LANDELS: Subdivision (3) simply provides that the agreement may cover after acquired title, which is the present law in California insofar as receivables and chattel mortgages. No. 4 limits a crop mortgage to a maximum of 5 years and subdivision (b) in effect outlaws your so-called add-on clauses in consumer transactions.

MR. BOHN: Would that be the case where a person, let's say, goes to a furniture store and buys a few items of furniture and then begins to acquire furniture in the future; that original contract would require, let's say, all furniture in the house as he acquires it.

MR. LANDELS: That's right.

MR. BOHN: Wherever he gets it.

MR. LANDELS: They do that now. In other words, he buys a stove and then the agreement provides "on all the furniture you may acquire until the debt is paid is additional security for the debt. The first thing you know everything he's got in the house is security for the original debt which he incurred when he bought the stuff. This would provide that an after-acquired property clause in the case of consumer goods would only apply to goods acquired within 10 days after you gave new value. I guess there's some opposition to this, but there's been a good deal of criticism of the way some of those add-on clauses have worked and maybe this goes too far in the other direction.

MR. BOHN: Under the present practice, would thereafter acquired furniture, no matter where it was acquired, is that correct? It wouldn't have to be acquired from the same seller.

MR. LANDELS: No.

MR. BOHN: And even if it were acquired from the same seller and cash were paid for it, nevertheless it still secures the original stove.

MR. LANDELS: Under this it couldn't.

MR. JOHNSON: I think as a practical matter, it would have to be from the same seller because it would be his after-acquired property clause that would come into play.

MR. BOHN: Or would it be after-acquired property of the debtor?

MR. LANDELS: No, it's the after-acquired property of the debtor.

MR. JOHNSON: I think most add-on clauses don't purport to give the seller a blanket mortgage. They purport to include within the terms of the contract everything that the buyer may subsequently buy from that seller. I think that's the typical add-on clause.

MR. LANDELS: This doesn't prevent that. I should think because he gives new value when he sells them the new goods unless he pays 100 percent cash which they don't do.

MR. JOHNSON: In any event, this limits it to 10 days.

MR. LANDELS: 5202 repeals the rule of *Benedict vs. Ratner*, which I think we discussed earlier. 5206, we've already discussed, subdivision (1) makes void a waiver of buyer of consumer goods of defenses against an assignee.

MR. BOHN: May I interrupt you at this time to go back to 5202 just a moment. However, these accounts receivable, the public is given notice of these accounts receivable regardless of the fact that they still stay in possession of the assignor by virtue of the reoordation of a notice.

MR. LANDELS: That's right.

MR. BOHN: So that in substance the opportunity for fraud for example is minimized by that notice.

MR. LANDELS: That's right. 5207 defines the duties of the secured party, that's the lender, when he is in possession of goods. He simply must use reasonable care in the custody for the preservation of the collateral in his possession. That's the general law anyway. I don't think there is any particular significance to that section. No. 3 makes a secured party liable for any loss by his failure to meet any of the obligations imposed upon him, but he does not lose his security interest.

Subdivision 5208 requires the lender at the written request of the debtor or any third person named by the debtor to give him a statement of the aggregate amount of the unpaid indebtedness and also to furnish the debtor with a statement listing or otherwise identifying the collateral. That becomes important under this act, because the notice which is filed with the Secretary of State can be a pretty general notice and if another secured party is interested in lending additional money to the debtor he should be in a position to find out from the senior secured party exactly what the amount of the debt and the security which is held.

MR. BOHN: That must be given at the request of the debtor?

MR. LANDEL: Yes, you see under this act we would eliminate the filing of the original security agreement. Instead of the original security agreement, we file a notice which is set forth in Part 4.

MR. BOHN: If the general creditor wants to find out this situation he must in effect force the debtor to request the information or the general creditor could do it as a condition to extending additional credit, for example.

MR. JOHNSON: As of today that presents some practical problems between general institutions of lending. We always work very closely with the creditors. It might apply to a manufacturing company, as one of the gentlemen mentioned here. It sometimes has been difficult to get the information on to them. I don't believe there are any problems between the banks and general creditors in that regard in any event.

MR. BOHN: Of course, the debtor himself, if he came to you to borrow money or anybody else to get credit and you refuse to give it to him in the absence of a statement which should include the amount of the obligations he has under this secured instrument then in effect it would be up to him if he wanted credit he'd have to get it for you.

MR. LANDELS: That's right.

MR. BOHN: But as to pre-existing creditors he could I presume defy them, in which event they'd simply close in on him, I suppose.

MR. JOHNSON: Well, that is true, but as a practical matter between the banks, they're all in the credit business and we talk without revealing that sort of confidential information.

(Recess.)

MR. LANDELS: We're beginning on Part 3, which deals with the general subject of the manner of perfecting a security interest. By perfecting a security interest we mean taking such action which may be necessary to make it good against third parties and Section 5301 simply states the general rule that except as otherwise provided in the act the security agreement is effective according to its terms between the parties, encumbrancers, purchasers and other transferees of the collateral and against creditors. Of course, it's just your general basic concept.

5302 provides simply that if a security interest is perfected in one way and later by another way the perfection dates back to the original perfection. For example, suppose you file and later take possession, it's a continuing perfection.

MR. BOHN: May I interrupt to ask a question? Are you implying—as to Section 5302, take the situation of where you originally start a security transaction by a security document not accompanied by possession and that's filed in accordance with the provisions of this act, when you take possession at some later date would that be a different type of security transaction? In other words, would you convert one type of security transaction into another?

MR. LANDELS: No.

MR. BOHN: Would you repeat then the situation which you have in mind of where there is a later perfection predated back to the first one.

MR. LANDELS: Let's assume you perfect it first by filing, possession is retained by the debtor, you later take possession of the property. All this section says is that it's a continuing perfection, it isn't a new perfection. In other words, it's perfected from the date of the original filing.

MR. BOHN: You mean it's not cancelled?

MR. LANDELS: That's right, that's the effect and dates back to the original date of perfection.

MR. BOHN: The only thing I can't understand is why it would be necessary for us to talk in terms of dating back.

MR. LANDELS: I don't know that it is.

MR. JOHNSON: Suppose your filing expires and in the meantime you've taken possession—in other words the five-year limit expires or something like that.

MR. BOHN: And you'd take possession before the expiration of the five-year period.

MR. JOHNSON: Then your perfection would relate back.

MR. BOHN: Then, in effect, you are really creating a new security interest, aren't you?

MR. LANDELS: No, it's a continuation.

MR. BOHN: Let us say the first one was a nonpossessory sort of thing by filing and that's about to expire. Well then you take possession and in effect you have a pledge transaction. Is that correct?

MR. LANDELS: That's correct.

MR. BOHN: Which is a new type of security, but the new type of security although itself does not require a filing would nevertheless have been perfected as of the date the original transaction took place. Is that correct?

MR. LANDELS: Yes, for bankruptcy purposes or something like that.

MR. BOHN: Or for any other purposes involving conflicts. In other words, the only reason it would be important in that particular case since you don't have to file as far as a pledge is concerned it would be important only in the case where you're dealing with priorities, wouldn't it, of unsecured creditors or bankruptcy or something of that type.

MR. LANDELS: Yes, I think so.

MR. BOHN: What is the duration of these liens?

MR. LANDELS: The effective duration of a filed notice is five years unless your statement of financing gives a later maturity date for the obligation and then it's effective for five years after the latest maturity date.

MR. BOHN: You file the notice of the existence of the security instrument, is that correct?

MR. LANDELS: That's right.

MR. BOHN: And then in the absence of something else that is good protection for a five-year period.

MR. LANDELS: That's notice for five years.

MR. BOHN: Of the existence of the obligation. Now five years passes and nothing further is filed, you have lost your priority at least if not the lien.

MR. LANDELS: That's right.

MR. BOHN: It would still be good as against persons who had notice of it I take it.

MR. LANDELS: Actual knowledge, yes.

MR. BOHN: Then this is a constructive notice situation that expires at the end of five years?

MR. LANDELS: That's right. You have the same rule today under chattel mortgages except it's four years.

MR. BOHN: The exception would be what again?

MR. LANDELS: If you state in your notice the latest maturity date of the obligation then it continues effective until five years after the latest maturity date. For example, take a chattel mortgage securing a bond issue, the bonds may run for 20 years. In that case you don't have to refile every five years if you give the latest maturity date of the obligation. Then the notice is good until five years after the latest maturity date.

MR. BOHN: Taking a simpler situation than that, suppose that the obligation was due three years from the date of the loan and you put in your notice the fact that this security instrument has been executed to secure an obligation which is due three years from date, then auto-

matically in effect you have an eight-year situation insofar as the expiration of the effective notice is concerned. Is that correct?

MR. LANDELS: That's right.

MR. BOHN: This doesn't affect the statute of limitation at all?

MR. LANDELS: No. 5303 simply states that general rule that security interest may be perfected by taking possession, in other words, by a pledge. 5304 states those situations in which it is unnecessary to file a notice in order to perfect your security interest. First is the obvious one, a security interest in which the lender has taken possession of the collateral. Possession is notice to the world. Second is a purchase money security interest in consumer goods which applies the rule we have in California today. In other words, you wouldn't have to file a notice of a conditional sales contract of consumer goods.

MR. BOHN: Nor a loan for money which is used to buy consumer goods.

MR. LANDELS: Correct. The chief change there is that today, except in the case of cattle and mining equipment, you don't have to give any public notice of a conditional sales contract of anything else. Under this act if you sold earthmoving equipment, for example, to a contractor on a conditional sales contract you'd have to file a notice. In fact, it's rather an absurd situation in California today if you take a chattel mortgage and you fail to file it for say a couple of weeks and forget to file it, you have no lien. You sell identical equipment on a conditional sales contract and assign that to a bank and it's good against the world forever without any public notice of any kind. So this act would change the rule to that extent and that is, that except in the case of consumer goods you would have to file a notice of a conditional sales contract to have it effective against third parties and creditors, which I think everybody agrees is desirable.

MR. BOHN: May I interrupt to ask this: This section says that a financing statement must be filed. Is that another way of saying "notice"?

MR. LANDELS: That's right, that's the notice.

MR. JOHNSON: It may be a copy of the security agreement itself.

MR. BOHN: Where is the section that provides what has to be in that notice?

MR. LANDELS: Section 5402. It's the minimum that must be in a notice.

MR. BOHN: A question of terminology, why is this called a financing statement?

MR. LANDELS: That's a fair question, it's the term used in the Uniform Commercial Code and we followed it. In many cases it will be a notice of intended financing. In other cases, as in the case of an ordinary chattel mortgage, the term may not be too apt. A notice of security interest might be a more appropriate term I think—in many respects it would be.

MR. BOHN: Going down to subdivision 2 of 5402 while we're on the subject, "a financing statement which otherwise complies is sufficient even though it's signed only by the secured party in certain circumstances." Now, what are those circumstances?

MR. LANDELS: That's in the case of a renewal——

MR. BOHN: In other words, this is a situation where, as I understand it, this notice is signed only by the lender.

MR. LANDELS: That's where he has a security interest out of state and the property is moved into this State. In that case he loses his security interest after four months unless he files a notice in this State. In that case it can be signed only by the secured party. And the other involves proceeds where he's filing a claim to proceeds in which the original collateral gave him a lien on proceeds but he wants to cover a specific proceeds by describing it.

MR. JOHNSON: That's where the transaction has been completed at some previous time, and the debtor may not be available or may not be co-operative for this further filing.

MR. BOHN: But in the normal circumstances it requires the debtor's signature before this notice can be filed.

MR. JOHNSON: That's right.

MR. LANDELS: The case under (b) would be where a bank has financed inventory and the debtor has also given him a lien on the proceeds in the form of conditional sales contracts of the goods he sold. The lender may want that filed as against the conditional sales contracts explicitly, because if he doesn't another lender on those conditional sales contracts would have priority, but only if the financing statement gives them that security and then he must refer to the original security in the financing statement.

MR. BOHN: The actual details of these transactions will normally not be found in the notice.

MR. LANDELS: That's right.

MR. BOHN: In other words, whoever is interested will have to get the debtor's agreement to get the details from whoever has them, the lender or the holder of the security instrument.

MR. JOHNSON: Technically, but as a matter of commercial practice if he just went to the lender of record he would be able to get the information.

MR. BOHN: But he couldn't force them under the terms of this bill?

MR. JOHNSON: No, he couldn't force it.

MR. BOHN: Is it your anticipation that the bulk of these filings will be copies of the security instrument itself or would be something in the nature of form notices?

MR. LANDELS: I think they'd go to this form notice as provided in the statute, which is pretty much the form of notice you use now in receivable financing and trust receipts financing.

Back to 5304, subsection (c), a security interest in a general intangible—notice need not be filed. That's just exactly the way the law is now. For instance, if you assign your interest in the estate of a decedent or any other form of intangible, a mere assignment to the secured party is sufficient.

MR. BOHN: But that would not include accounts receivable.

MR. LANDELS: No, they're not intangibles.

MR. LANDELS: The next is a security interest under the Uniform Sales Act and that's the vendor's lien which is provided for in the sales act.

A security interest in a motor vehicle required to be registered under the Vehicle Act. In other words, we don't disturb the pink slip arrangement at all under this act. It is continued exactly as it is now.

(f) refers primarily to airplanes, the security interest of which has to be registered under the Civil Aeronautics Authority. (g) refers to a temporary surrender of instruments or documents similarly as now done in a trust receipt. In other words, you can retain your security interest except as against bona fide purchasers for 21 days after their surrender to the debtor, as done usually in the case of bills of lading or documents of title. That's consistent with existing custom under trust receipts.

MR. BOHN: I'm not sure I understand that particular situation. You are excluding from the requirement of filing the notice a security interest temporarily perfected in interest or documents under 5314.

MR. LANDELS: That's right.

MR. BOHN: What would be this temporary interest?

MR. LANDELS: Well, a bank takes a bill of lading, for example, as a security interest. It has possession of them. Under this they could surrender them to the debtor for a period not to exceed 21 days, which is the limitation in the Bankruptcy Act, and still retain their security interest.

MR. BOHN: What would be the purpose of surrendering them to the debtor?

MR. LANDELS: The purpose is to let him get the goods and process them or get them and sell them and package them—that sort of situation.

MR. BOHN: The lender keeps his security then not only on the bill of lading but on the goods which the bill of lading represents for that 21-day period? What about the proceeds? Suppose the debtor gets the bill of lading and goes and picks up the goods from the bailee or wherever they might be and sells them, all with permission of the lender, does the lien then extend to the proceeds of the sale of those goods?

MR. LANDELS: If the proceeds are identifiable. That's covered in another section.

MR. BOHN: Is that the existing law also?

MR. LANDELS: Yes, under the Trust Receipts Act, except it's 30 days. His security interest in the documents wouldn't be good as against a bona fide purchaser of the documents. It's good for that 21 days in the event that the fellow goes into bankruptcy, for example.

MR. BOHN: You mean it would not be good as a bona fide purchase.

MR. LANDELS: No, not if they're negotiable documents. In other words, if the bank released negotiable documents and the debtor went out and negotiated them the bank's out of luck.

MR. BOHN: Then, in fact, there is not protection to the lender under that circumstance?

MR. LANDELS: No.

MR. JOHNSON: Except as against general creditors.

MR. LANDELS: That's the same as the present rule under trust receipts.

MR. BOHN: This would be true, however, whether it was a trust receipt situation or not, wouldn't it?

MR. LANDELS: That's right, but it's the type of transaction which is now handled by the use of a trust receipt.

Section 5305 defines the effect of failure to perfect a security interest. In other words, you take a security interest and fail to perfect it, then your rights are subordinate to anyone who holds a perfected security interest.

MR. BOHN: A second mortgage, in other words?

MR. LANDELS: Yes, or the holder of another unperfected interest who got his first or a person who becomes a lien creditor before your security interest attached and in the case of inventory, a buyer in the ordinary course of business, and in the case of other instruments a buyer who takes delivery of the goods without knowledge of the unperfected security interest. In substance the same rule you have today if you don't, for example, record a chattel mortgage.

MR. BOHN: What about your general creditor?

MR. LANDELS: Your general creditor—there's no question of priority arises until either bankruptcy or he obtains an attachment lien.

MR. BOHN: When you're referring in (c) to lien creditors you're talking in terms of an attachment lien or a judgment lien.

MR. LANDELS: Yes. Under this as it's now written if you don't perfect a security interest within 10 days then you're out of luck as against an attaching creditor. There is a 10-day relation back as against attaching creditors which in substance is the same rule you now have on chattel mortgages except it's a reasonable time. In other words, if you have to take a chattel mortgage and record it within a reasonable time you're ahead of an attaching creditor, but if you don't, the attaching creditor is ahead of you. This rule is the same except that it states a specific period of 10 days as distinguished from a reasonable time.

MR. BOHN: Let me be sure I understand the effect of this section, if any, on unsecured creditors. If, in fact, a person holds a security interest but for one reason or another has not been perfected and therefore notice has not been given. He nevertheless prevails over general creditors, is that correct?

MR. LANDELS: No, if he fails to file within 10 days. Let's assume he takes a security interest today and he doesn't file, on the 12th day a creditor attaches the property—the creditor's ahead.

MR. BOHN: But suppose there's no attachment.

MR. LANDELS: If, on the 12th day he goes into bankruptcy the trustee is a creditor holding a lien, the trustee's ahead of him, so the general creditors are ahead of him if he doesn't file within 10 days, either by an attachment or by a bankruptcy.

MR. BOHN: The trustee is a creditor holding a lien under general bankruptcy law—where would that be referred here, also No. (c)?

MR. LANDELS: It isn't stated in so many words here—yes, it is.

MR. JOHNSON: On page 6 "lien creditor" is defined as a trustee in bankruptcy.

MR. LANDELS: A lien creditor means a creditor who has acquired an attachment or an assignee for the benefit of creditors or a trustee in bankruptcy or a receiver in equity. In other words, let's assume that on the 12th day this fellow makes an assignment for the benefit

of his creditors, then they're ahead of the holder of the security interest.

MR. JOHNSON: Would he be ahead of him or on an even basis?

MR. LANDELS: Yes, I stand corrected on that—he wouldn't have a prior position, he'd be another general creditor. It's not the rule in real property. You can take a mortgage and never file it and you're still ahead of an attaching creditor. This changes the rule as far as chattel mortgages are concerned only in that it specifies 10 days as distinguished from a reasonable time. That pretty well covers 5305.

MR. BOHN: On subdivision (2), "an unperfected security interest" that's where the person has not yet filed let's say, "has priority for a period of 10 days after it attaches over the rights of a lien creditor who becomes such after the security interest attaches." Now, in the example just given of bankruptcy, let us assume that on the fourth day after this instrument was executed and before it was recorded or filed a petition in bankruptcy is forced. Then, at that time, the unperfected security interest still has priority.

MR. LANDELS: That's right, unless it can be set aside under the Bankruptcy Act.

MR. BOHN: For some other reason, as a preference of creditors?

MR. LANDELS: Yes, if it's a bona fide security for present value it would have priority.

MR. BOHN: That is different from the present recording statutes on chattel mortgages.

MR. LANDELS: No, providing you record within a reasonable time. It has to be promptly.

MR. JOHNSON: Nobody knows exactly what "promptly" means though. That's one of the pitfalls. This was considered to be a reasonable, definite period.

MR. BOHN: The problem that occurs to me is that to this extent you have a secret lien, don't you? To this extent, for nine days or whatever it is?

MR. LANDELS: That's right.

MR. JOHNSON: Under the Trust Receipts Act you can have one for 30 days.

MR. LANDELS: Under conditional sales contracts you can have it forever.

MR. BOHN: This is a blanket transaction you have here that covers everything?

MR. LANDELS: Yes.

MR. BOHN: It's at the same time a liberalization and a limitation, it covers everything during this 10-day period, every type of security instrument which is contemplated by this.

MR. LANDELS: For the sophisticated lender 10 days may be too long a time, for the unsophisticated it probably isn't.

MR. JOHNSON: If you have central filing you have to allow for that too. For example, if you mail something from El Centro to San Francisco by ordinary mail it may take two or three days to get here, you have to allow for that.

MR. LANDELS: 5306 is a section which does not appear in the Uniform Commercial Code. It simply provides, which is our present

rule in California, it's a general proposition that anyone taking a security interest takes subject to any prior security interest or any rights of third parties of which he has actual knowledge.

MR. JOHNSON: The Uniform Commercial Code changes that rule. We think it's a good rule.

MR. LANDELS: Which is our general rule in California today.

MR. BOHN: In other words, if the person who takes the interest knows there's somebody ahead of him he can't prevail.

MR. LANDELS: That's right.

MR. BOHN: Going back to 5305, what situation is a supplier in during that 10-day period or person extending general credit to the debtor?

MR. LANDELS: Well, you have to divide that question, because your first question related to a supplier, which implies that your security interest is on inventory. Under this your security interest on inventory won't attach until 10 days after you file. In that particular case the supplier at least has constructive notice for 10 days by which he comes in ahead if he sees fit to attach.

MR. BOHN: I'm thinking of the situation of where the debtor mortgages or executes a security instrument for a large portion of his assets and the business is an active business ordering materials and that type of thing all the time, there would be nothing on the record to indicate that a large portion of these assets have been removed from his control. In other words, he would not know for that 10 days that perhaps the person was in difficulty.

MR. LANDELS: That's right.

MR. JOHNSON: He might not be in difficulty, he might be borrowing cash to pay all these bills. This can't be taken for a previous debt, this is a current money loan so he'd have the cash and is putting up this as security.

MR. LANDELS: If he's giving that security for an antecedent debt then it could be knocked out in bankruptcy anyway.

MR. BOHN: I was thinking of the situation of where—it would seem to me on this whole bill that the net effect of it might be that the moment the debtor began to execute these security instruments his general creditors or the people with whom he is generally doing business might begin to be suspicious of him automatically in about the same way psychologically a creditor might feel if a person places a homestead on his home or something like that, as if he is preparing for a defense against a lawsuit so that during this 10-day period they simply would have no notice of it and at the end of that time they would do whatever they wanted to do.

MR. LANDELS: That's right.

MR. JOHNSON: Which is the case now in chattel mortgages and in accounts receivables the notice has to be given in advance.

MR. BOHN: I was always under the impression that these rights ran from the time of recordation, that's in error, is that correct?

MR. LANDELS: Yes, as against attaching creditors.

MR. JOHNSON: Not as against a second mortgagee.

MR. LANDELS: A second mortgagee would come in ahead if he filed first, just as he would here.

MR. BOHN: But as to general creditors I am wrong, the present law does not set those rights as to the date of recordation, there is a 10-day period.

MR. JOHNSON: No, there is a reasonable time, whatever that is. It differs according to the security device, whether it's a trust receipts transaction or an account receivable or a chattel mortgage. You have different rules.

MR. BOHN: There's still a period of time under present law where the transaction would not be known to the public.

MR. LANDELS: Yes. In the case of real property the rule in California is that you can have a secret mortgage which is good against general creditors indefinitely. If I give you a mortgage and a deed of trust and you don't record it, it's good against attaching creditors. He only gets what you have. That's the law in California.

MR. JOHNSON: Of course, you could have a conditional sale contract on a \$10,000 lathe today which would be a completely secret lien indefinitely.

MR. LANDELS: Maybe the 10 days should be 8 and maybe it should be 7, I don't know. You have to allow nowadays for these long holiday periods where you may have four holidays in a row and you can't cut the time too short.

5307 covers the subject of the priority of perfected security interests. Roughly speaking, the rule is that between two security interests, both of which are perfected, the one who files first prevails, which is roughly our present law.

MR. BOHN: That is regardless of this 10-day period we have been talking about.

MR. LANDELS: Yes, this is as between two security interests, the first to file prevails.

MR. BOHN: The 10 days simply wouldn't run in this situation.

MR. LANDELS: No. Anyone to protect himself thoroughly would protect himself immediately.

MR. JOHNSON: But you'd wait 10 days before you'd advance the money, wouldn't you? You would on receivables.

MR. LANDELS: On inventory you'd have to wait 10 days because your notice is no good during that 10-day period, on inventory.

MR. BOHN: But that would not be true as to other types.

MR. LANDELS: That's right. 5308 simply protects the statutory artisan's liens, garageman's liens and that type of lien. They are given the same priority as they are now given by statute. This act would not affect those at all.

5309 is the general section protecting the rights of a buyer in the ordinary course of business. In other words, a lien on inventory is of no effect as against a purchaser in the ordinary course of business.

MR. BOHN: Getting back to this farms products thing again. A buyer in the ordinary course of business is protected, but that does not apply to farm products.

MR. LANDELS: It does not apply to farm products in the possession of the grower.

MR. BOHN: Why?

MR. LANDELS: Because there may be a chattel mortgage on it and he's not in the business of selling. That's your rule today, because

there may be a crop mortgage on it. In other words, if you go out to a farmer and buy his hay crop that's on his field and there's a crop mortgage on it the crop mortgage is ahead of you but once it leaves the farmer's premises the crop mortgage no longer attaches to the farm products.

MR. BOHN: Take the situation where these goods have left the premises, say it's hay stored in the barn and the farmer sells it, nevertheless the buyer in the ordinary course of business is not protected. Is that the sum and substance of what this does?

MR. LANDELS: You mean a second buyer?

MR. BOHN: No, a first buyer from the farmer. The farmer harvests the wheat and puts it in the barn and then it's purchased by anybody in the ordinary course of business.

MR. LANDELS: If there's a crop mortgage on it the buyer is not protected. That's the law today. If the financier of the farmer lost his lien as soon as the crop was harvested the farmers would have a hard time getting any financing. But once it's removed from the farmer's premises then the lien is gone and that's the risk the lender takes.

MR. BOHN: This could apply to other types of security documents besides a crop mortgage. This language says in general that the buyer in the ordinary course of business is protected in all cases except from a seller engaged in farming operations, so that it wouldn't have to be necessarily, would it, a crop mortgage?

MR. LANDELS: It might be a mortgage on a cattle herd.

SENATOR BEARD: Some people here have to make a 4:30 flight and I wonder if you could point out the differences, if any, in the remaining portions of this.

MR. JOHNSON: Yes, I think we can, fairly quickly.

MR. LANDELS: 5310 simply protects bona fide purchasers to whom a negotiable instrument is conferred. That doesn't change the present law. 5311 probably does change the present law in that in the case of chattel paper and nonnegotiable instruments it protects a purchaser who takes possession of them in the ordinary course of business. In other words, if a bank is lending on the chattel paper of an automobile dealer and the chattel paper is left in the possession of the automobile dealer the dealer sells it to a bona fide purchaser in the ordinary course of business the ordinary purchaser prevails. I don't know whether anybody knows what the rule is today on that. That's only of interest as between conflicting financing interests.

5312 doesn't change the present law because we don't have any liens on inventory under the present law, but it provides that a purchase money security interests in goods which becomes inventory are subordinate to the rights of a person who has filed a financing statement covering the inventory. In other words, if a finance company or a bank finances a manufacturer and a financing statement covers his inventory and his work in process and his supplier takes a purchase money security interest say in the raw material or the parts, the supplier's purchase money security interest is subordinate to the previously filed security interest. There is a lot of argument over that section as to which way it should be.

5313 adopts almost verbatim existing Section 2974 of the Civil Code, which protects the advances under a prior mortgage if the maximum

amount is stated in the mortgage as against a second mortgage. That's almost exactly the same as the rule that is now found in Section 2974.

Subdivision 2 would be a new rule and this is not found in the Uniform Commercial Code. It was in the first draft and doesn't appear in the later drafts. The very obvious reason is the surety companies probably objected to it. It states that if a surety such as a bonding company has a security interest to secure its obligation to perform the contract and later on someone else advances money to the principal to perform that contract, it's actually used in the performance of the contract, then the second security holder is ahead of the first. Let's assume that a contractor has a contract to build a bridge, the surety company in its bond fine print takes a security interest on everything that he has and let's assume in order to complete the contracts he has to buy some equipment so he goes to a lender who asks for a security interest on it. He actually uses the money to buy the equipment to perform the contract and then the security interest of the person who advanced the money is ahead of the security interest of the surety. That's one you'll probably hear something more about. It's a good rule otherwise how is a fellow going to get the money to finish a contract and this surety wants their pie and eat it too.

MR. BOHN: The theory is that it reduces the obligation of the bonding company.

MR. LANDELS: Surely, to the extent that the money is so used. 5414 is the rule we discussed previously about releasing negotiable documents for 21 days in the possession of the debtor. You don't lose your security interest, but you don't have any interest which is good against a bona fide purchaser, which is the same rule that now prevails under Trust Receipts financing.

5315 spells out the rules governing the right to proceeds. I can't say to what extent that changes the present law because we have no statutory law on the subject. In substance, the rule is that if the security agreement expressly covers proceeds then the secured party has a security interest in the proceeds as long as they can be identified, but if commingled he can't identify them and has no security interest in them. I couldn't tell you whether that is present law or not.

The balance of that section deals with rather technical rules involving the proceeds of chattel paper, which I don't think we need go into now. In other words, you can have this kind of a situation, you can have a bank financing a dealer, a lien on the proceeds, the dealer sells the goods and gets a conditional sales contract and then he borrows on the conditional sales contracts and then the goods are returned, whose goods are they? This attempts to spell out that problem.

Accessions—that section covers the situation in which you might have a security interest on a steam shovel and the tires wear out, the contractor buys a whole set of new tires under a conditional sales contract and then he doesn't pay anybody. This provides for proration between the fellow who has the security interest on the tires and the security interest on the entire vehicle. I don't know whether that changes the law, but it spells it out.

MR. BOHN: I have a series of questions involving these sections which we're now discussing, but in the interests of time I'd like to reserve them for a later hearing, because there are some general ques-

tions I'd like to ask on the whole deal and I feel that time is getting on so that because I don't ask them doesn't mean I don't have any.

MR. LANDELS: 5307 covers much the same problem—that's where goods are commingled or processed, that in substance if there's a general financing security interest covering the inventory any lien on the goods which become an integral part is subordinate to the prior secured interest. 5318 simply states the present California rule that when crops cease to be growing crops and are removed from the premises the security interest is lost, which is a rule we have already discussed.

MR. LANDELS: 5321 I don't think states any particularly new rule. The second section simply provides that an account debtor can pay his assignor until he receives notice of the assignment, which is the present law.

Subdivision 3 is new. That provides that a term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties or which requires the account debtor's consent to such assignment is ineffective. That's a debatable proposition, but certain firms are in the habit now of putting in their contracts from their small suppliers, some of the European companies I think do it, a prohibition against the assignment of the account. They just don't want to be bothered, so that you find your small supplier unable to collect on his accounts.

MR. BOHN: Where they might be able to control their supplier they wouldn't be able to control that account if it went into the hands of somebody else. What I'm getting at is that if a person is in the habit of continually supplying goods to a buyer he is going to be much less aggressive I presume in collecting his accounts receivable than if those accounts receivable were transferred to someone else. He doesn't want to lose the business in other words.

MR. LANDELS: This is really more the reverse of that.

MR. JOHNSON: This is where a company would have the contract with a sub and they prohibit the assignment of the account or the contract. Now this sub wants to borrow money and it contains this provision which requires the manufacturer's consent before that assignment is effective. Now our counsel in the bank interpret that on the conservative side and say it isn't valid unless you do get the consent. The aircraft company says, "We won't consent" and that leaves the sub unable to finance. Some companies, I know, take the position under the present law that accounts receivable detaches from the contract itself and therefore is assignable without the consent and they do it, but there's a moot question and it raises these very things. This spells it out.

MR. LANDELS: It puts the small supplier in a very bad spot because he can't raise any money on his receivables.

The provisions on filing are new. Except in the case of crop mortgages they provide for central filing in the office of the Secretary of State, which is indeed new. Today trusts receipt notices are filed with the Secretary of State and chattel mortgages are filed with the Secretary of State as well as in the county of the residence of a mortgagor. This would provide for all filing with the Secretary of State with the exception of crop mortgages.

SENATOR COOMBS: Why would you file with the Secretary of State in San Francisco rather than Sacramento? That doesn't make sense to me.

MR. LANDELS: The reason that was put in—it can be changed, the communication is going to be extremely important in this central filing. Communication with San Francisco from almost every part of the State by mail is much faster than it is to Sacramento, but it can be Sacramento just as well as San Francisco.

MR. BOHN: Or Los Angeles.

MR. LANDELS: Yes, that can be changed any way the committee wants to change it.

SENATOR COOMBS: Why not with the recorder of the county where the transaction takes place?

MR. LANDELS: The difficulty, Senator, in commercial financing today is trying to determine what county.

SENATOR COOMBS: Let me add, "or both," where the transaction takes place and the Secretary of State.

MR. LANDELS: We provide in here for the Secretary of State at the close of business of every day to forward to each county recorder a list in alphabetical order of all statements filed with him by any debtor whose residence is in that county or whose chief place of business is in that county so that there will be a notice in each county, in most counties the following morning, of all filings during the previous day in the Secretary of State's office. But today in commercial financing, particularly around the Bay Area it's almost impossible to know where to file, with the result that you file everywhere out of an abundance of caution and central filing in the case of all sorts of movable equipment is a must and we think this, for all practical purposes, gives far more effective notice because anybody interested in knowing whether or not a particular business concern or a particular person has mortgaged any of their property can check with the Secretary of State and know.

Today he may have to check in a half dozen counties if the fellow is doing business in a half dozen counties. He may think he lives in Alameda County because he lives in Berkeley and actually discovers that he lives in Contra Costa County. He may think his residence is in Santa Clara County because he lives in Palo Alto and he wakes up and finds his residence is in San Mateo County. County boundary lines for commercial lending have ceased to have any realistic significance, in our opinion, and both from the standpoint of being able to make sure that you have properly perfected your interest and from the standpoint of anyone being able to find out whether there is an outstanding security interest we think a central filing is far more efficient. That's the reason we have to go to partial central filing under our chattel mortgage statute.

We think this provision for forwarding lists each day—the volume won't be very great. The total volume in Los Angeles County of the type of instruments which would be filed under this today is about 10 percent of their total filings and you have about 40 percent of the population in Los Angeles County so the chances are that your filings under this act will be substantially less than the total filings today in the county recorder's office of Los Angeles County for the entire State. We think it will make a much more effective and efficient filing system

and we have reason to believe that if this act were passed the installation of certain I.B.M. equipment would give almost instantaneous service from the Secretary of State's office as to whether or not a particular person has filed. Much of the value of this legislation would be lost we think if we tried to have local filing.

The rest of it is largely mechanics. It provides for filing assignments, termination statements and releases and is pretty much a matter of mechanics. There's a provision for the Secretary of State issuing a certificate much as is done now under the Trust Receipts Act and the Accounts Receivable Act, for which, of course, a fee would be paid.

The last Part 5, are the sections dealing with the remedies in the event of default. In substance they require in the event of default the secured party must sell the property at either public or private sale. He must give five days' notice of any private sale by mailing notice to the debtor at the address appearing in the financing statement and a notice to any secondary secured party who may have filed a request for notice and in the case of a public sale must publish notice for five days. The secured party is prohibited from purchasing in the property at a private sale unless it's sold on a recognized market or there are standard price quotations. He may buy if it's a public sale. Today, except in the case of motor vehicles, there's no requirement of any notice of sale under a conditional sales contract. In chattel mortgages it's waived; under this it couldn't be waived. In substance, that's the provisions on default.

MR. BOHN: Except there is one additional fact which we discussed earlier and that is the forfeiture situation.

MR. LANDELS: Yes. That, gentlemen, except for matters of detail, is the substance of the bill and I think you'll see as a result of our discussion that it doesn't change the law as much as it may at first appear as far as the basic principles of secured credit are concerned.

MR. BOHN: That brings up my next question and that is, is this bill necessary?

MR. LANDELS: We think it would be helpful in reducing the cost of doing business in this field, certainly in many situations it would make credit available where it may not be available now and reduce the cost of it and would resolve a substantial number of difficult questions which today plague both lawyers and lenders. Maybe you can answer that better than I because you've had 30 years experience in this business.

MR. JOHNSON: We've made an effort to get that same question from Pennsylvania where they've operated under this and I could show you letters and statements made by bank officers there who have definitely stated that this has made available credit which otherwise wasn't available and from a bank's standpoint it reduces the cost in mechanics which is passed on to the borrower, and as I have indicated there seems to be progress made in all other lines, arts and sciences, and I just have a hunch that after 50 years there could be a few things that could be helpful from ordinary intercommerce transactions.

MR. LANDELS: I think the best evidence of that is the fact that at every session of the Legislature for the last 30 years we've had bills patching up the Accounts Receivable Statute, the Trust Receipts Statute,

the Chattel Mortgage Statute—we put in the Chattel Mortgage clause and the Trust Receipts because the dealers couldn't get flooring except through this circuitous route. Then we extended that to aircraft, then we had to amend it because you couldn't finance under a trust receipt where the property was being leased by a dealer instead of being sold, we patched up our Accounts Receivable Statute at almost every session. The same is true of our Chattel Mortgage Statute. For instance, one bank lost \$35,000 on a chattel mortgage on earth moving equipment because the fellow moved it out of the county and they didn't record in the new county and then he went broke. When those things happen there's a tightening of credit all the way down the line and it was that case that prompted us to amend the chattel mortgage statute to provide for filing with the Secretary of State as well as in the local county.

MR. JOHNSON: Under *Benedict v. Ratner* where dominion has to be exercised over the funds it's now a very, very expensive operation of mechanics and detail on the part of the borrower that has to be maintained from our point of view to keep that dominion, because he has to collect this money and has to pay us in kind and bring those physical checks in. In spite of our willingness it might just—and avoid an awful lot of separate record keeping which he now has to keep up and invariably they'll tell you that it's a pretty expensive operation, which we have no desire to maintain. As a practical matter we could cut this detail down very considerably and eliminate a lot of that cost by the repeal of *Benedict v. Ratner*. We don't know now where we are on that opinion anyway.

MR. LANDELS: This would permit a bank or a finance company to make a loan to a processor or to a manufacturer which in effect is a floating, revolving lien on his inventory and his work in process that cannot be done today. The very asset upon which he should be able to borrow is the asset which the law says you must not pledge. You can do it part way with a trust receipt, but only part way. You can do it part way with a field warehouse, which is very expensive, which has been the practice in Canada and Australia for generations. That would probably be the chief significance of the adoption of this. The other is a simplification all the way down the line.

MR. BOHN: In going through this I'm wondering if the whole net effect is not going to be to place too much emphasis on these new types of security transactions and create two results. One where a person might well be tempted to get his business so tied up that the slightest change in a situation means that he would lose everything since he would be operating on somebody else's money for the most part, wouldn't he?

MR. JOHNSON: The companies with which you're concerned today are growth companies and they are in that position in any event, necessarily, so if you look at their statements you'll see that they invariably owe two or three times the amount of their investment in one form or another and they are dependent upon the willingness of the creditors to go along and of course, it is always in our interest to go along and make a more successful buyer. I wouldn't think that would have too much bearing; today they have to depend, taxes being what they are, particularly growth companies, they have to depend on their creditors

and if they don't get that help in one form or another and trade creditors do it as well as banks to the extent we can, they just couldn't exist and they couldn't grow.

MR. LANDELS: It's far better for a small, growing concern to make an orderly borrowing from a bank than it is for him to simply finance himself by not paying his bills and that's what many of them do. Apparently, we made a very careful check in Pennsylvania, where this has been in effect for five years, almost six years and it has apparently had no effect at all upon the extension of credit.

MR. JOHNSON: I have been informed that one of the largest banks that has made a hundred or more filings under this, only one or two trade creditors have ever talked to them about it. I got that directly from the chief loan officer in that bank, so it apparently hasn't created all these problems that we anticipate that it might. It has worked very smoothly and they feel that they have been able to take care of creditors that they would not otherwise have been able to do.

SENATOR DORSEY: Who is backing this proposed bill?

MR. LANDELS: The bill has the support of the California Banker's Association.

SENATOR DORSEY: Are they endorsing this bill in its entirety?

MR. LANDELS: Yes, I think that's a fair statement. In addition to that I might say that for three days we had a meeting of the senior loan officers of all of the banks in Los Angeles and San Francisco and went over this very carefully from a practical operating point of view. The Bank of America as yet has not taken a position on it. And it has the endorsement of the finance companies.

SENATOR COOMBS: Do these suggested amendments parallel those of the National Commissioners on Uniform State Laws with which we met in Los Angeles?

MR. LANDELS: This draft follows the draft of the Commissioners on Uniform State Laws very closely but differs in a number of respects. The most important one I think is that the draft as approved by the Commissioners on Uniform State Laws makes this applicable to fixtures to real property.

SENATOR COOMBS: There are only three states that now have Uniform State Laws on this subject.

MR. LANDELS: That's right, Massachusetts, Kentucky and Pennsylvania. They're introducing it in about 17 states in January. I have prepared a memorandum, Mr. Chairman, which I'll be glad to furnish the Committee later pointing out the differences between this draft and the Uniform Act.

SENATOR BEARD: We would certainly appreciate that. I want the audience to know that there is known opposition to certain phases of this. Everyone will be provided an opportunity to be heard at a later date. I don't believe that the subcommittee will make any recommendations as of now until all parties have been heard from. If any of you in opposition have any concrete suggestions we would appreciate having them in advance so that Mr. Bohn will have the benefit of your thoughts in advance of the hearing date. Any of you who are in opposition if you would care to identify yourself, either publicly or by letting Mr. Bohn know after the hearing, it would be helpful to us. We would like to know the organizations you represent, too.

MR. LANDELS: Mr. Chairman, would you like to advise any of those present that I'll be happy to furnish as many copies of this draft as they may need.

SENATOR BEARD: Thank you.

WALTER BRUNS: Mr. Chairman, I just have one word and that is that our position up to the present has been that we are not yet convinced of the real need for such extensive legislation and have suggested to the Committee in Los Angeles that a better approach might be a more piecemeal approach and the most flagrant ambiguities in the present law could be amended. We have not yet had an opportunity to study this; that's through nobody's fault; we just got it four days ago; I don't know what our position will be when we meet again, but I just want to make it clear that as of now we are in opposition to it.

SENATOR BEARD: Senator Weller.

SENATOR WELLER: Frank Weller of Los Angeles, representing the Credit Managers Association of Southern California and as of now I would say we are opposed to the law and James Connors, who is attorney for the San Francisco Board of Trade and was here this morning and had to leave early wanted it noted that he was here and we would like to have a transcript of the proceeding today.

———: I represent Mr. Hooper, who is northern director of the California County Recorders Association and we would like to go on record as being in opposition to the bill.

SENATOR BEARD: If there are no others we will take a very short recess before proceeding with the agenda. We want to thank you gentlemen for your presence.

It is also my understanding that the California Bankers Association will submit a detailed analysis of the difference between the proposal discussed today and the original version of the bill.

3. OUTLINE OF DIFFERENCES BETWEEN THE PROPOSED CALIFORNIA STATUTE ON SECURED TRANSACTIONS IN PERSONAL PROPERTY (AUGUST 1958 DRAFT) AND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (1957 OFFICIAL TEXT)

Prepared by E. D. Landels, counsel, Commission on Legislation and Taxation, California Bankers Association.

The proposed Statute on Secured Transactions in Personal Property submitted by the California Bankers Association is a revision of Article 9 of the Uniform Commercial Code and in substance, arrangement, and philosophy follows closely Article 9 of the Uniform Commercial Code as it appears in the 1957 official text. There are, however, a number of differences between the proposed statute and the latest draft of Article 9, and the purpose of this memorandum is to point out those differences. In this memorandum the California statute will be referred to as the "California draft" and Article 9 of the Uniform Commercial Code will be referred to as the "code draft."

Significant Substantive Differences

1. Treatment of Fixtures. The code draft covers the taking of a security interest in goods which are or which become fixtures to real property (9-102). It contains provisions defining the relative rights of persons holding a security interest in goods

which either are fixtures at the time the security interest is taken or later become fixtures and of persons having or acquiring an interest in the real property. It contains provisions under which one holding a security interest in fixtures, in event of default, may remove them from the real property under certain conditions (9-313). The California draft would leave the law of fixtures exactly as it is today and the rights of a person having a security interest in goods which become fixtures to real estate would not be changed (5102(4)). It is the view of the California committee that if the code draft were adopted in California it might result in a hopeless conflict between the claims of those having a security interest in fixtures and mechanics' lien claimants. Inasmuch as the right to a mechanics' lien in California is conferred by the Constitution, it would be difficult to resolve this problem in this legislation. The committee also believes that such a provision would have a disturbing effect upon the making of construction loans.

2. General Intangibles. The California draft contains a comprehensive definition of general intangibles (Section 5105). This definition makes it clear that the term "general intangibles" covers every conceivable type of personal property (other than the types expressly covered by other provisions of Article 9), including bank accounts, the interest of an heir in an estate, claims in bankruptcy, claims arising from torts, and copyrights, licenses, etc. The California draft further provides that no filing will be necessary to perfect the assignment of a general intangible as security for a debt (Section 5304). The code draft contains a short definition of general intangibles reading as follows: "General intangibles means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents, and instruments" (9-106). The code draft then exempts from the operation of the code transfers of any claim arising out of a tort and transfers of any deposit in a bank, savings and loan association, credit union or like organization (9-104(k)). This means that filing would be required in connection with the assignment of all other types of general intangibles when assigned or transferred as security. This has never heretofore been required, and in the opinion of the California committee it is entirely unnecessary. Furthermore, the definition of a general intangible in the code draft is such that many questions will arise as to the applicability of the code to many types of intangibles specifically included in the California draft's definition. Inasmuch as the adoption of Article 9 would involve the repeal of the existing statutory law relating to the assignment of various rights, we believe that the statute should be comprehensive in character and not leave any gaps in the law.

3. Inventory Liens. The California draft provides that a nonpurchase money security interest on inventory would not become effective until 10 days after notice thereof is filed. This is designed to give unsecured creditors of merchants much the same protection as they now have under the Bulk Sales Law and under the Inventory Lien Law (Section 5204). No such delay is provided for in the code draft.

4. Crop Mortgages. The code draft provides that no security interest may attach to a crop which becomes such more than one year after the security agreement is executed (9-204). The California draft provides for a five-year limitation (5204(4)). It is believed that the one-year limitation in the code draft is unrealistic and would seriously curtail agricultural credit and is unnecessarily restrictive.

5. Waiver of Defenses by Buyer of Consumer Goods. The California draft contains a provision reading as follows: "An agreement by a buyer of consumer goods as part of the contract for sale that he will not assert against an assignee any defense or setoff arising out of the sale is not enforceable by any person" (5206). This provision appeared in earlier drafts of the Uniform Commercial Code but is omitted from the 1957 draft.

6. Arrangement of Subject Matter of Part 3. The arrangement of subject matter in the California draft of Part 3, dealing with priorities, is different from the code draft. The California committee discovered that lawyers and laymen alike who attempted to study Article 9 became lost in Part 3 and were unable, except with the aid of the comments, to determine the basic rules governing priorities. It was concluded that this was due in part to the fact that in Part 3 of the code draft the arrangement of the subject matter seems to follow no logical pattern. The basic rules governing priority are so mixed up with special rules that it is difficult for one who has not lived with the code to determine just what these rules are. For

example, in the code draft the basic proposition of Article 9, namely, that a perfected security interest prevails over an unperfected security interest, is nowhere explicitly stated. It has to be deduced from the following:

In 9-301 it says:

"An unperfected security interest is subordinate to the rights of

"(a) persons entitled to priority under 9-312."

Then, turning to 9-312, in subparagraph (5) appears the following:

"(5) In all cases not governed by rules stated in this section, priority between conflicting security interests in the same collateral shall be determined as follows:

"(b) In the order of perfection unless both are perfected by filing regardless of which security interest attached first under Section 9-204(1)...."

It is believed that the California draft of Part 3, by first stating separately the general rules in sections which are complete in themselves, is much more understandable to the uninitiated than is the code draft.

7. Priorities. Apart from the different arrangement of the sections, the California draft of Part 3 differs from the code draft in the following particulars:

(a) Knowledge. Under the code draft one who takes a security interest and perfects it (i.e., files or takes possession) with actual knowledge of an earlier unperfected security interest, has priority over the earlier security interest (9-312). In fact, he apparently takes free of any equities of third persons even though he has actual knowledge of them. This principle is entirely new to the field of secured transactions and in the opinion of the California committee is unsound. Section 5306 of the California draft makes it clear that one who takes a security interest with actual knowledge of an earlier security interest or of any rights of a third party in the property takes subject thereto. Nothing comparable to Section 5306 is found in the code draft.

(b) Suppliers' Liens or Inventory. Under the code draft, even though a lender has filed a notice of intention to finance a borrower on the security of his revolving inventory, a subsequent supplier can obtain a purchase money security interest on goods or materials furnished the borrower which will be ahead of the prior lender's security (9-312). Under the California draft a purchase money security interest in goods which are or become inventory would be subordinate to the rights of a prior lender on the security of a revolving inventory who had given adequate notice by filing (5312). While theoretically something can be said for the code rule, the California committee believes that it would make impractical the orderly financing of smaller borrowers, particularly manufacturing companies, on the security of their inventories, which is one of the chief purposes for the adoption of Article 9.

(c) Goods Which are Commingled or Become Part of a Product. For the same reason, the California draft of the sections dealing with priorities when goods are commingled or become part of a product or mass differs from the code draft. The code draft gives to each holder of a security interest equal priority and a proportionate interest in the product or mass (9-315). In the case of inventory, the California draft gives priority to the inventory financier who first files a notice of financing (5317). The California draft, however, follows the code draft as to collateral which is not inventory. The California committee believes that under the code draft a manufacturer would find it difficult to finance his operations on the security of his inventory.

(d) Validity As Against Attaching Creditors. The code draft provides that an unperfected security interest is subordinate to a lien creditor who becomes such without knowledge of the security interest (9-301 (b)). There appears to be little logic in making knowledge a test of the rights of an attaching creditor, and in any case if knowledge is to be a test it should apply to the time when credit is extended and not to the time when the attachment is levied. The California Draft protects an attaching creditor against an unperfected security interest regardless of whether the attaching creditor knows of it, but it does give the holder the security interest 10 days within which to file his notice, and during that 10 days he is protected against attaching creditors (5305(a), 5307(3)). This is consistent with the California law relating to chattel mortgages, which gives a chattel mortgagee a reasonable time to record his chattel mortgage.

(e) Security Interest in Chattel Paper and Nonnegotiable Instruments. Both drafts provide that a security interest may be obtained in chattel paper and nonnegotiable instruments by filing, although possession is retained by the borrower.

The code draft in such a case protects a purchaser of such chattel paper or non-negotiable instruments who gives new value and takes possession of the paper or instruments in the ordinary course of business and without knowledge that the specific paper is subject to the security interest (9-308). The California draft would extend the same protection to one who takes a security interest in such chattel paper or nonnegotiable instruments and actually takes possession of them (5311). Likewise, the code draft protects a purchaser of chattel paper who gives new value and takes possession in the ordinary course of business against a prior lender who claims a security interest in the chattel paper merely as proceeds, and even though he has knowledge that the specific paper is subject to the security interest (9-308). The California draft would extend the same protection to one who took a security interest in the chattel paper and actually took possession of it (5311).

(f) *Advances by Holder of Senior Security Interest.* The California draft contains a section, No. 5313, which does not appear in the code draft, and which substantially incorporates the rules now found partly in Section 2975 of the Civil Code and partly in case law. Section 2975 provides that where the holder of an earlier security interest makes advances after a later security interest has attached, the earlier security interest has priority as to such later advances only if such advances together with all prior advances do not exceed a maximum amount set forth in the financing statement filed by the earlier secured party. Under the code draft the position of the parties in this situation is not clear, but according to the comments to Section 9-312 the holder of the earlier security interest would prevail in all cases whether or not any maximum amount was stated in the financing statement filed by him. The California rule has worked well in practice and the California committee believes it should be retained. In any case, the rights of the parties should be clearly stated. The other part of the rule is that where the maximum amount secured by the earlier security interest is not set forth in the financing statement the earlier secured party still has priority as to advances until such time as the later secured party gives written notice to the earlier secured party.

(g) *Advances to a Debtor to Enable Him to Perform an Obligation for Which a Surety is Liable.* The California draft contains a provision to the effect that when a person advances money to a debtor to enable him to perform an obligation for which a surety is secondarily liable and the money is in fact used to perform that obligation, then a security interest taken by the person advancing the money has priority over an earlier security interest given to the surety (5313(2)). A similar provision was found in the earlier drafts of the Code, but was omitted from the 1957 draft.

8. *Security Interest in Crops After Severance.* The California draft includes a provision that a security interest in crops ceases to exist when the crops have been severed and removed from the premises of the grower (5318). This continues the present California rule found in Section 2972 of the Civil Code. The code draft is silent on the subject.

9. *Modification of Contracts After Assignment.* The code draft contains a provision, omitted from the California Draft, to the effect that even though payments due under a contract have been assigned as security, a modification or substitution of the contract made in good faith between the parties to the contract is binding on the assignee, and provides that the assignee acquires corresponding rights under the modified or substituted contract (9-318(2)). The California committee feels that this is not a sound rule and that after payments have once been assigned the contract should not be subject to modification or substitution without the consent of the assignee.

10. *Form of Notice and Mechanics of Filing (Part 4).* The provisions of Part 4 of the California draft dealing with the form of a financing statement and the manner and effect of filing are substantially the same as those of the code draft. There are, however, one or two important differences. The financing statement provided for in the California draft is somewhat more complete than that found in the code draft (9-402). For example, it must include the mailing address of the debtor and that of the secured party as well as the county and address of the debtor's residence and the county and address of the chief place of business of the debtor. This is important because of the provisions in the California draft for sending daily to each county a list of all instruments filed by debtors having their residence or chief place of business in that county.

The form of financing statement in the California draft also makes provision for giving the final maturity date of the indebtedness, and for giving the maximum amount of the indebtedness to be secured at any one time (5402).

The form of statement contained in the California draft omits any reference to fixtures, as under the California draft a security interest could not be obtained on fixtures attached to real property as against third parties except under the rules governing real property encumbrances.

The code draft provides that a financing statement shall be effective for only five years unless renewed (9-403). The California draft provides that if the final maturity date of the indebtedness is included in the financing statement, the financing statement shall remain effective until five years after such final maturity date (5403(4)). This difference is of great importance, because otherwise chattel mortgages securing long-term bond issues would become ineffective unless a renewal statement was filed every five years (5403(4)). The code draft entirely overlooks this important point.

The code draft provides that after a financing statement has lapsed, it may be removed from the files by the filing officer and destroyed (9-403(3)). This provision is omitted from the California draft because it is believed that the matter of the destruction of public records should be left to a general statute, and also it is believed to be unwise to permit the destruction of notices immediately after they have lapsed because of the fact that their filing and their contents may become important in subsequent litigation, such as bankruptcy of the debtor.

11. **Furnishing List of Filings to the County Recorder.** The California draft contains a provision requiring the Secretary of State each day at the close of business to forward to the county recorder of each county a list of all statements of financing filed with him during that day by a debtor whose residence or chief place of business is located in that county. This is designed to give credit man and others much the same information as they now receive daily in the local commercial papers. It will compensate for the fact that all filings would hereafter be in the office of the Secretary of State (5408).

12. **Remedies on Default (Part Five).** The California draft provides that in the case of a public sale, notice be published for at least five days before the date of sale and notice must be mailed to the debtor at the address set forth in the financing statement. It also provides that in the case of private sale notice must be mailed to the debtor at least five days before the date on or after which the sale is to be held. It further provides that the secured party may not purchase at a private sale unless the collateral is sold in a recognized market or is subject to widely or regularly distributed standard price quotations (5504). The code draft contains no express provisions specifying the time within which notice must be given, or whether or not it must be published. It simply provides, "Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition, including the method, manner, time, place and terms must be commercially reasonable" (9-504). Failure of the code draft to spell out the place of sale could cause serious inconvenience and injustice to debtors. The code draft provides that the secured party may buy at public sale but does not define what a public sale is. In the view of the California committee it is important that both creditors and debtors know exactly what notice must be given and when a sale is bad and when it is good in the absence of fraud. The California draft omits altogether Section 9-507 in the code draft, which in the opinion of the California committee is nothing more than an invitation to litigation and is unnecessary.

The code draft requires that notice of sale be given to any other secured party (except in the case of consumer goods) who has filed a financing statement, while the California draft requires that such notice be given only to subsequent secured parties who have filed with the secured party a written request for notice.

Other Differences

(1) Under the code draft the act would not be applicable at all to the transfer of an interest in a deed of trust or mortgage although given as collateral security or to an assignment of rents given as security (9-104). Under the California draft the act would apply, e.g., to the assignment of a note and deed of trust as collateral security and to the assignment of rentals as security except when given as additional security for a loan secured by a deed of trust or mortgage on the real property (5103). In view of the repeal of the existing statutory provisions governing pledges and assignments the code draft would leave a gap in the law.

(2) The California draft resolves the troublesome question of what constitutes a person's chief place of business by including a workable definition (5104(e)).

(3) The California draft includes within the definition of document, "gin tickets" and "compress receipts." In view of the immense amount of cotton financing done in California on the security of gin tickets and compress receipts, this is important.

(4) The California draft contains provisions not found in the code draft dealing with what constitutes knowledge by or notice to an organization maintaining branch offices (5104(n), 5104(t), and 5208(4)).

(5) The code draft provides that any description of collateral is sufficient if it identifies what "is described," which appears to be meaningless (9-110). The California draft modifies this language to give it meaning and adds a provision reading: "After acquired property may be referred to by general kind or class if the property can be reasonably identified as falling within such kind or class when it is acquired by the debtor" (5109).

(6) The California draft provides that nothing in the act shall be deemed to validate any charge or practice which is illegal under any statute or regulation relating to "pawnbrosers," "personal property brokers," or "conditional sales," as well as under any of the statutes referred to in the code draft (5201).

(7) The California draft contains an express provision that "an assignment or transfer of property as security constitutes a security agreement" (5204). The code draft implies that perhaps there must be some agreement in addition to the assignment (9-204).

(8) Both drafts provide that a security interest under an "after acquired property" clause cannot attach to consumer goods unless the debtor acquires them within 10 days after he borrows the money, thereby outlawing certain types of "add on" clauses in installment sales contracts. The California draft excepts from this rule goods acquired as replacements for the goods on which the security interest originally existed (5204(4)(b)).

(9) The California draft omits a provision of the code draft (9-207) requiring a lender who holds instruments or chattel paper as security to take all necessary steps to preserve rights against prior parties.

(10) The California draft contains an express provision, not found in the code draft, exempting the debtor from the risk of loss or damage to the collateral if the loss or damage results from failure of the secured party to use reasonable care in the custody and preservation of collateral in his possession (5207(2)(b)).

(11) The provisions of the California draft dealing with the obligation of the secured party to furnish to the debtor the amount of the indebtedness owing and to approve and correct lists of the collateral differ somewhat from the corresponding provisions of the code draft. (Cf. 5208 and 9-208.)

(12) The California draft provides that if a security interest is properly perfected it is not lost by reason of a change in the use to which the goods are put (5302(3)). This is to cover the case in which goods might be purchased as consumer goods and later be put to commercial use.

(13) The code draft makes filing unnecessary to perfect a purchase money security interest in farm equipment "having a purchase price not in excess of \$2,500" (9-302(c)). The California draft omits this distinction and would require filing to perfect a security interest in farm equipment regardless of value.

(14) The code draft provides that no filing is necessary to give notice of the assignment of accounts if the assignment, in conjunction with other assignments to the same assignee, does not "transfer a significant part of the outstanding accounts" of the assignor. This exception is omitted from the California draft in the belief that it would be a very difficult exception to apply and because it would result in lenders being unable to rely upon the absence of a filed notice (9-302(3)).

(15) In the section dealing with the right of a secured party to identifiable proceeds (5315) (9-306), the California draft provides that if proceeds are deposited in a separate bank account containing only such proceeds they shall be deemed to be identifiable cash proceeds. The code draft seems to leave this question in some doubt.

(16) The code draft provides that in certain situations a security interest in goods which become installed or affixed to other goods takes priority over "claims of persons to the whole" (9-314). The California draft provides that this rule shall not apply to goods which have been so manufactured, processed, assembled, attached, or commingled that their identity has been lost or which have become an integral part of a product (5316(5)).

(17) The code draft contains a provision to the effect that a security interest in crops given to secure a loan given not more than three months before the crops become growing crops takes priority over an earlier crop mortgage. This is omitted

from the California draft. It is believed that this rule is impracticable and would curtail rather than facilitate agricultural financing and would be difficult to apply in the case of many California crops, such as artichokes, asparagus, and alfalfa and the like (9-312(2)).

(18) The code draft contains an express provision to the effect that a debtor may voluntarily or involuntarily transfer the collateral notwithstanding a provision in the security agreement prohibiting such a transfer (9-311). This provision is omitted from the California draft. Such a rule would fly in the face of certain provisions of the Penal Code of California making it a crime to dispose of mortgaged property without the consent of the mortgagee. Certainly the lender should have the right to require his consent to be obtained before the borrower disposes of the property which he has mortgaged as security for debt.

(19) Both drafts provide that the term in a contract between an account debtor and his creditor prohibiting the assignment of the account is ineffective (9-318). This is designed to prevent large manufacturers from making it impossible for their suppliers to finance their operations by an assignment of the debts owing to them from the manufacturer. The California draft also provides that an agreement which requires the account debtor's consent to such an assignment will likewise be ineffective. Otherwise the prohibition found in the code draft could be easily circumvented (5321(3)).

(20) Both drafts provide that the rules set forth giving rights to the debtor and imposing duties on the secured party may not be waived or varied except as authorized in the act. The code draft adds a provision reading, "but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable" (9-501(3)). This is omitted from the California draft in the belief that it would only breed litigation and in the belief that the rights of the debtor and the obligations of the lender should be stated explicitly and that such a provision only muddies things up (5501(2)).

(21) The code draft provides that if a deed of trust or mortgage includes personal property the secured party may proceed to foreclose under the provisions of law relating to real property (9-501(4)). The California draft adds a provision, however, that in such event the secured party must nevertheless give the notice to the debtor provided for in the act in addition to any notices which may have to be given under the rules governing foreclosures of deeds of trust or mortgages upon real property (5501).

(22) The corresponding sections of the two drafts dealing with the rights and obligations of a secured party who undertakes to collect collateral consisting of accounts or contract rights differ in minor particulars (Cf. 5502(2) and 9-502(2)).

(23) Both drafts provide that if after foreclosure a surplus exists and a junior encumbrancer claims the proceeds, the lender conducting the foreclosure proceedings may require reasonable proof of the rights of the junior lienholder before paying the money over to him. The California draft, however, adds a provision to the effect that the lender conducting the foreclosure proceedings may also require satisfactory indemnification against the claims of other persons to the proceeds (5504, 9-504(1)(c)).

(24) Section 9-507 of the code draft is omitted entirely from the California draft. Due to the fact that the California draft spells out just how a sale should be conducted and what notice must be given rather than relying on the general requirement of "commercial reasonableness," it is believed that this section is unnecessary and in any case would only be an invitation to litigation.

NOTE: In addition to the above there are certain differences in phraseology between the California draft and the code draft, but it is believed that the above substantially covers all of the substantive changes. Many of the changes in phraseology result from an effort to make the language of the code more readily understandable to the uninitiated and are made in the belief that in some respects the language of the code is too elliptical and that it is better to spell out exactly what is meant than to leave it to inference or interpretation.

October 1958

4. FURTHER INFORMATION CONSIDERED

The following letter and report were received from Mr. Maurice D. L. Fuller, Chairman of the Committee on Commercial Code of the State

Bar of California, setting forth the results of their study and recommendations.

SAN FRANCISCO 4
November 25, 1958.

SENATE JUDICIARY COMMITTEE
California State Legislature
Attention of John Bohn, Esq., Counsel
Sacramento, California

GENTLEMEN: This letter is written to you in my capacity as chairman of the Uniform Commercial Code Committee of the State Bar of California, as I understand that your committee is giving consideration to the enactment of parts of this code by the California Legislature.

The Uniform Commercial Code has been under consideration by a committee of the State Bar of California for several years and at the present time this committee is not willing to recommend the adoption of the code as a whole in California.

On the other hand, considerable time has been spent in a study of Article 9 and numerous revisions have been suggested with respect to its adoption as a separate article in California. I believe that most of these changes are reflected by Senate Bill 1402 as introduced in the 1957 Legislature and previously approved by this committee. Our committee has found no real objection to the enactment of Article 9 as so revised or with the additional revisions contained in the August 1958 draft, some of which are referred to in our report to the board of governors. Therefore our committee will strongly urge that Article 9, substantially in the form evidenced by Senate Bill 1402 of the 1957 Legislative Session, with the revisions referred to be enacted.

I am enclosing herewith a copy of the report of our committee to the Board of Governors of the State Bar, which may be of help to you in considering what recommendation you wish to make to the Legislature. I am also enclosing copy of the communication from the State Bar of California to the members of my committee authorizing the appearance, if necessary, of a representative of my committee before you.

Very truly yours,

MAURICE D. L. FULLER

SAN FRANCISCO 3
October 22, 1958

TO THE MEMBERS OF THE COMMITTEE ON COMMERCIAL CODE

GENTLEMEN: At its September, 1958, meeting the Board of Governors adopted the following resolution:

Resolved, That the 1958 annual report of the Committee on Commercial Code hereby is received and ordered filed, and the committee hereby is authorized to have a representative appear at any hearings by the Senate Interim Judiciary Committee on Senate Bills 1402 and 2141, if it appears advisable so to do.

Very truly yours,

JACK A. HAYES
Secretary

Commercial Code

TO THE BOARD OF GOVERNORS:

The code in its then form has been in effect in Pennsylvania since July 1, 1954. It is anticipated that the 1959 session of the Pennsylvania Legislature will adopt the amendments recommended by the editorial board as a result of suggestions made by the New York Law Revision Commission.

Massachusetts has enacted the Revised 1957 Code to be effective late this year. Kentucky has done likewise, to be effective July 1, 1960. In Massachusetts and Kentucky the State Bar Associations and the State Bankers Associations have both endorsed the code. The Commercial Code Committee of the Ohio Bar Association has recently approved the code, and apparently will favor its introduction in the 1959 Legislature. We are advised that the code may also be introduced in 1959 in the Legislatures of Connecticut, Georgia, Illinois, Indiana, Michigan, Nevada, North Dakota, Utah and Vermont. The present attitude of the New York Law Revision Commission is not known to us.

It is likely that the code will be introduced in the California 1959 Legislature, but apparently no real endeavor will be made to pass it in its entirety without organized support.

Your committee does not wish to recommend action by the State Bar on the entire code at this time. We suggest that this be delayed until a further report of the New York Commission and action by the New York and other Legislatures is available.

Article 9 was the subject of Senate Bill 1402 of the 1957 Legislature, previously approved by this committee. Since that time it has been revised by a committee of bank lawyers with the aid of Mr. Harold F. Birnbaum, former chairman of this committee, and Mr. George R. Richter, Jr., one of California's Commissioners on Uniform State Laws, and loan officers from various banks. The most important change is to require any notice of an inventory lien to be filed at least 10 days before the lien would become effective. This is calculated to give general creditors the same sort of opportunity now provided for under Section 3440 et seq. of the Civil Code. Also the purchase money security interest of a supplier would be made subordinate to the security interest of a lender on the inventory who filed his notice of financing prior to the time that the purchase money security interest attached. Part 3, dealing with priorities, has been rewritten and rearranged, but without significant substantive changes other than those noted.

Article 6 dealing with bulk transfers was the subject of Senate Bill 2141 at the 1957 Legislature, and in that or a revised form should be recommended if Article 9 is to be adopted.

Senate Bills 1402 and 2141 are still before the Senate Judiciary Interim Committee and it is believed that this committee will hold hearings on both bills as revised this fall. It is likely that they will be pressed for enactment at the forthcoming session.

Article 5 is a codification of existing general practice and there is no real reason why it should not also be adopted. However, there seems to be no concerted effort to have it adopted.

It is suggested that the committee should be continued in existence, in view of the pendency of the 1958 Legislature and continued action towards the adoption of all of the code.

Respectfully submitted,

MAURICE D. L. FULLER
Chairman
JULIAN C. ISEN
Vice Chairman

5. FURTHER COMMITTEE HEARINGS

The subject of Senate Bill 1402 was again considered by the Committee on December 4, 1958, at the State Building in Los Angeles.

Present:

Senator Donald L. Grunsky, Chairman, Interim Committee
Senator Edwin J. Regan, Chairman, Standing Committee
Senator Stanley Arnold
Senator James E. Buseh
Senator Carl L. Christensen, Jr.
Senator Nathan F. Coombs
Senator Richard J. Dolwig
Senator Fred S. Farr
John A. Bohn, Committee Counsel

Witnesses:

Halden Broaders, Bank of America
James M. Conners, Board of Trade
Phil Gregory, California Bankers Association
Edward D. Landels, California Bankers Association
Ray Lee, County Recorder, Los Angeles County

The testimony at this hearing is substantially as follows:

MR. BOHN: The next items on the agenda, Mr. Chairman, are the items on the regular afternoon calendar. Items Number 7, 8, 9 and 10 all sponsored by the California Bankers Association. Item Number 7 being Senate Bill No. 1402. In connection with that bill may I state that the bill was given a considerable amount of time by one of the subcommittees earlier and at that time there was not sufficient time available to hear opponents of the bill in full. So may I suggest, Mr. Chairman, that after a brief statement by its sponsors as to what the bill intends to do, that we then hear from the opposition.

SENATOR GRUNSKY: All right, such will be the order. Who is your first witness?

MR. BOHN: Mr. Landels, would you like to come forward please?

MR. LANDELS: You want this statement, I gather, very brief and then hear the opposition and then we will resume, is that right?

SENATOR GRUNSKY: Yes, so that everyone will understand Mr. Landels and those of you interested in this particular legislation, we do not want to endeavor here to have a hearing which will then simply be duplicated again in the Session. In other words, we want to accomplish here that which will save us time and trouble and avoid duplication in the session and if we're not going to be able to resolve anything here when we find that out we will then cut it off and reserve the hearing until the Session, but in order to determine that if you will start it off then we'll hear from the opposition and find out just how far apart we are and whether we need to spend any more time on it today. All right, Mr. Landels.

MR. LANDELS: Well Senate Bill No. 1402, as revised by a draft dated August, 1958, I think which each of you have, is a revision of Article 9 of the Uniform Commercial Code. The Uniform Commercial Code was prepared and promulgated by the American Law Institute and the National Conference of Commissions on State Laws after about a ten-year study. When it was first published in 1953, the California Bankers Association made quite an exhaustive study of it and concluded that the last article, Article 9, covering the whole field of secured transactions of personal property offered a very solid basis for a very genuine improvement in the law. We thereupon appointed a subcommittee to make a careful and detailed study of Article 9 and were fortunate enough to have Mr. George Richter, who is presently, I think, chairman of the California Commissioners on Uniform State Law, and Mr. Harold Birnbaum, who is one of the advisors to the American Law Institute, sit on our committee. And this bill has now been further revised as a result of that study.

Basically, it follows very closely Article 9 of the Uniform Commercial Code. It differs from the Uniform Commercial Code in a number of respects most of which are due to the conditions peculiar in California. The bill was heard before your subcommittee for nearly an entire day. Before that meeting I think notice of the hearing was sent to some 40 statewide organizations and I believe the same 40 organizations were notified of this hearing. At the last meeting, the Bank of America indicated opposition to the bill. We have worked on certain amendments which are agreeable to us and which we would suggest

to the Committee to the August, 1958 draft, and it is my understanding that if those amendments are accepted, the bill will be acceptable to the Bank of America, at least there will be no opposition to it.

I will simply state very briefly what the bill does and try not to say any more, if you prefer to hear from the opposition. The bill would replace all of the existing statutory law governing the taking of security interests in personal property, replace the existing statutory law and chattel mortgages, trust receipts, accounts receivable, inventory liens, pledges, field warehousing and the like and substitute for that variety of instruments a single form of security which could be used in any form of security on personal property. That is the essence of the provisions of Article 9, and it would substitute for filing in the County Clerk or the County Recorder's office or the Secretary of State's office, a filing in the Secretary of State's office of all security instruments on personal property. That is in effect, what the bill does. I think in view of your comments perhaps you want to hear from the opposition and then let me conclude, is that correct?

SENATOR GRUNSKY: I think that is what we should follow because all of us either in subcommittee or in previous Judiciary Committee hearings have had the detailed explanation of the bill, so let us assume that the opposition is sufficiently familiar with it from what they know before your presentation to address themselves the opposition.

MR. LANDELS: And then may I reply?

SENATOR GRUNSKY: Yes, oh yes. Mr. Bohn, please.

MR. BOHN: Before hearing from the opposition, the committee has received a letter from Mr. Fuller of the law office of Pillsbury, Madison and Sutro, who writes in his capacity as chairman of the Uniform Commercial Code Committee of the State Bar. He states as follows: "The Uniform Commercial Code has been under consideration by a committee of the State Bar for several years, and at the present time this committee is not willing to recommend the adoption of the code as a whole in California. On the other hand, considerable time has been spent in the study of Article 9, and numerous revisions have been suggested with respect to its adoption as a separate article in California. I believe that most of these changes are reflected by Senate Bill No. 1402 as introduced in the 1957 Legislature and previously approved by this committee. Our committee has found no real objection to the enactment of Article 9 as so revised, or with the additional revisions contained in the August 1958 draft, some of which are referred to in our report to the Board of Governors. Therefore, our committee will strongly urge that Article 9, substantially in the form evidenced by Senate Bill 1402 of the 1957 Legislative Session, with the revisions referred to be enacted. I am enclosing herewith a copy of the report of our committee to the Board of Governors of the State Bar which may be of help to you in considering what recommendations you wish to make. I am also enclosing copies of communications from the State Bar and from members of my committee authorizing the appearance, if necessary, of a representative of my committee before you."

SENATOR GRUNSKY: We also have that other letter that I got out of order regarding the agricultural question.

MR. BOHN: The letter to which Senator Grunsky refers is the letter dated December 21, 1958, addressed to him from Everett A. Matthews

on behalf of the John Deere Plow Company. Substance of the letter is that this firm and this company believe the bill to be desirable and recommend its adoption. He states that he intended to be here personally but was unable to attend and therefore asks that this letter be made part of the record.

SENATOR GRUNSKY: Could we have the opposition now, please? Do you have a list of those in opposition or are they subject to call from the floor?

MR. BOHN: Several groups have been in touch with the committee stating their basic opposition to this bill. I see they're represented here today, the County Recorder's Association among others, but I think you're speaking for the credit groups, aren't you?

FRANK WELLER: Yes.

FRANK WELLER: Mr. Chairman and gentlemen of the committee, my name is Frank Weller. I represent the Credit Manager's Association of Southern California with a membership of about 1,700 wholesalers, jobbers, banks, etc. in this area. I will say, however, I'm not speaking for the banks at the present time. The association, as such, is opposed to this measure and I have jotted down a few reasons why, in my opinion, this bill should not be enacted into law and I think I have enough copies here for each member.

Now, with the chairman's permission, I would like to read this into the record, it is very short and I may make some comments on these various points. The following are a few of the reasons why the above numbered bill should not be enacted into law:

1. It has not been satisfactorily established by any of the proponents of this measure that there is any real necessity for this legislation. Now, in that connection, so far as I am concerned, I will say that the only really tangible suggestion that has been made for the passage of this legislation is that some time in the past in some bank some clerk apparently put a chattel mortgage into his desk and overlooked filing it promptly and as a result the chattel mortgage was held to be invalid as to general unsecured creditors. Now there has been, of course, the talk of uniformity and I will reach that in a moment.

2. There is no public demand for this legislation. Now the only demand that I know of for this legislation comes from the California Bankers Association. I should state here now, that according to my information, the Bank of America is not for this bill, but it has taken a neutral position and I am authorized or permitted to state that Mr. Steinmeyer, who is the local counsel for the Bank of America, and Mr. John Walters who is his chief assistant, who has been with them for 25 years, speaking for themselves personally and not for the bank, state that in their opinion it is absurd and silly to repeal all of the laws that we have on the statute books today such as the chattel mortgage laws, the conditional sales contract laws and all of these others, that it is absurd to repeal all of those for an unknown, uncertain bill such as is proposed here. I do not mean unknown, but uncertain and especially in view of the fact that most of these laws have been on the statute books for probably 25, 30 or 40 years. They've been litigated for all of that period, there have been hundreds of thousands of dollars spent in litigation construing those laws and now you're going to enact a law

which, as I say, is uncertain in its terms and for the next 25 years we will be litigating this law, and have it construed to determine what it needs.

To my mind that is not good business and it is not good for the State of California, it may be good for the banks, but it is not good for the unsecured creditors. Now continuing:

3. This bill is written by and for the benefit of certain banks and moneylending agencies.

4. It is intended to benefit the interest of secured creditors and it is clearly detrimental to the interests of unsecured creditors.

5. This bill proposes to repeal all of the laws of this state relating to pledges, assignments, chattel mortgages, conditional sales contracts, inventory liens, trust receipts, leases or consignments intended as security, and all other laws relating to loans secured by personal property.

6. Many of these laws have been on our statute books for more than 50 years and during that period have been amended from time to time and there have been thousands of decisions construing these laws at a cost to litigants of many thousands of dollars.

7. The present law precluding a chattel mortgage on the stock in trade of a merchant has been in effect since 1872 and this bill if enacted, would repeal that law and permit a security interest on a stock in trade.

8. Conditional sales contracts retaining title in the seller are vitiated by this proposed bill, and all the seller has is a security interest.

9. This bill provides that a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

10. A purchase money security interest may be perfected in 10 days, and as a result it can be a secret lien against unsecured creditors for the nine-day intervening period.

11. That practically all attorneys, including the attorneys for the banks and lending agencies, and many of the employees of those institutions are so familiar with the existing laws and the decisions construing the same that there is no logical reason for repealing the same.

12. That the proposed law is so incomprehensible that the average lawyer will be unable to understand it, and it will take 25 years of litigation in the courts before the real meaning and effect of this law can be established.

13. The reports as to the workings of this law in Massachusetts and Pennsylvania are not applicable in California as both of those states did not have many of the personal property liens statutes such as we have in California, and therefore the said law filled certain voids in Massachusetts and Pennsylvania which do not exist here.

14. This proposed statute was originally authored by the Committee on Uniform Laws, but it has been changed, altered and modified to such an extent by the local proponents of the law that it now bears little resemblance to the uniform law and any reference to it as a uniform law is clearly a misnomer and entirely misleading.

Now, there in essence, are some of the reasons why we are opposed to this bill. Furthermore, I don't think that the Legislature of California should enact any law which cannot be easily understood by the average citizen or particularly by the average lawyer. With all due respect to the proponents of this law, who are all good friends of mine,

and anything I say is not personal to them, I say that this law is drawn in such a manner that the average lawyer will not be able to understand it and that was evidenced to me at the hearing which was held by this committee in Sacramento the forepart of this year, when the law was explained by the proponents and the attorney for this committee asked certain questions. They admitted then that there were certain changes that probably should be made, this particular section should be construed in a way that the Legislative Counsel had indicated, which indicated to me that that law is not in proper form now to be submitted to the Legislature for adoption, because these proponents have been studying this thing for three years and yet right today they're still making amendments to it and, of course, with my past services in the Legislature I know it is a practice to get a bill through, eliminate all the objections you can by amendment with the hope that in the future sessions it will be much easier to amend it in the form in which you want it.

I realize that's the practice, just as you gentlemen do too, and we are afraid that this is the situation here and, as I said before, there is only one law that I know of within my memory that has been gotten through the Legislature which is incomprehensible and that's the Trust Receipts Law and if any of you gentlemen have tried to read that and can understand it you've got a job on your hands. Now, we're going to have not quite so bad a situation here, but it is going to be somewhat similar insofar as this particular law is concerned. Now, since we have all of the laws that we have on the Statute Book, and so far as I know there is nothing particularly wrong with the Chattel Mortgage Law or the other laws mentioned here. If there are, they can easily be amended, we understand them, the attorneys for the banks understand them, the people who work at the banks understand them, but because someone has happened to make a mistake in the bank and failed to record a chattel mortgage promptly and the bank got stuck for a few thousand dollars is no reason why we should change all the laws of California on the subject of personal property liens, in my opinion. So that's the position of our association.

SENATOR GRUNSKY: You've made it quite clear, you're not making any suggestions for amendment, you're simply opposed in principle to the bill and, as such, would oppose it in any form if and when it is introduced in the next session of the Legislature?

MR. WELLER: I think that is true, Senator Grunsky, for this reason. We cannot tell the—

SENATOR GRUNSKY: No, I understand your reasons, you've presented them. We don't want at this time to get into a full-blown hearing on it if it is going to be controversial and it is going to have to have a full hearing in the session, we'll reserve the hearing until that time. The point I am making is you can make no constructive criticism or make no suggested changes to the present bill, you're simply opposed to it in principle.

MR. WELLER: We are opposed to it in principle, Senator, for the reason that we can't tell the effect of it.

SENATOR GRUNSKY: Are there any questions of the committee, having in mind that as it now appears evident this is a measure which

I, myself, regardless of whether I would support it now and later in the session I would say that it's the type of legislation which should have a full hearing during the regular session, and under those circumstances I wonder if there's anything further to be gained by hearing witnesses now who will only have to come before us again and repeat all of their testimony.

(UNIDENTIFIED): I would like to hear the permanent position of the Bank of America.

SENATOR GRUNSKY: Well, the point is, you are going to hear it come January 1959. Do you want to hear it now and then hear it all over again in January? For the purpose of completing the record we will get several more brief statements, but I think you've accomplished the purpose you wanted. I suggest that we take no affirmative conclusive action at this time in passing it, you will have your day in court, so to speak, in the session on this in accordance with the general concensus as it appears here now.

MR. WELLER: And, of course, Senator, we prefer that this subcommittee not make a favorable recommendation to the standing committee.

SENATOR GRUNSKY: Well, we understand your position. Now, is there other opposition to be expressed here, having in mind we do not want a general discussion of the merits here, but I think for the record we would like to know who else is opposed to this.

MR. CONNERS: My name is J. M. Connors. I am Counsel for the Board of Trade of San Francisco, which is an organization of wholesalers and jobbers in San Francisco and the bay area of approximately 375 members. While I'm not authorized to speak on behalf of the Credit Managers Association of Northern and Central California, which has approximately 1500 members with branches in Sacramento, Stockton, San Jose and Fresno, in the past the two organizations have co-operated in either sponsoring or appearing in opposition to many bills before the Legislature that adversely affect creditors interests.

I subscribe to the statements made to the committee by Mr. Frank Weller on behalf of the Credit Managers Association of Southern California and wish to state that on behalf of the Board of Trade of San Francisco we are opposed to the bill. We feel that if any amendments to our present laws on chattel mortgages, accounts receivable, trust receipts, pledges should come from the unsecured creditors and so far neither Mr. Weller nor I have been approached by our respective organizations suggesting that any amendments to our present laws be proposed by bills of the coming Legislature. Mr. Weller pointed out the repeal of the various laws in California which are set forth in Section 11 and Section 13 of the proposed bill here of some 60 pages and you gentlemen, as practicing lawyers, are familiar with the provisions of the laws of the chattel mortgages, trust receipts and accounts receivable, and if all these laws were repealed, you, as well as I, and all the attorneys in California will have to study this new law and then determine whether or not we can advise our clients as to the meaning and effect and it could be that there will be litigation with the courts for a number of years.

Before concluding, I was told by Mr. James Dean, the Secretary of the Building Material Dealers of Southern California, that if he were

present he would make a statement that his organization at this time is not in a position to either recommend or disapprove the bill in its present form, but he understands there may be amendments to be introduced and his organization reserves their right to comment favorably or unfavorably upon the bill. So as Senator Grunsky has mentioned a few moments ago, this bill will receive the consideration of the Judiciary Committee in the coming session of the Legislature, I assume that Mr. Dean will be present at that hearing to present the views of his organization.

SENATOR GRUNSKY: Thank you. Might I, I hope speak the mind of the committee and make this very clear, what we do not want to have happen is that when the matter comes up for hearing in the standing committee you and other opponents of the measure who have had it before you now since it was introduced and has been in print in these various revised forms, that you will say, "Well, we haven't had a chance to study it, we ask that it be referred to an interim committee for further study." You can see how ridiculous that would be and how ridiculous it would make us look if we keep referring it every biennium to a further interim committee for study. Now, I can see where you would come up and oppose it on its merits and, in principle, you're opposed to the whole thing, but am I correct in this statement that you have been given a full and fair appraisal of the situation, you're in a position to decide that you like it or you do not like it on principle and can face it on the merits and won't have to say "Well, we need more time to study it or refer it to an interim committee for further study," that you can stand and fall on a full hearing at the next session of the Legislature.

MR. CONNERS: That's correct, and I think I speak for Mr. Weller.

SENATOR GRUNSKY: All right. Does the committee, incidentally, agree with me on that point? In other words, that we have accomplished this much as an interim committee that we have gotten the bill in the best form that the proponents can submit it, we now have the issues defined, the point of cleavage or difference is marked, we're ready to make the basic decision and there should not be any necessity of someone coming up with the suggestion that it be referred to an interim committee for further study, we'll either face it squarely and kill it, or adopt it.

With that, I think we'll have any closing remarks from further opposition and the Bank of America or others that want to make a few brief remarks for the record, but it appears that this will be a matter without recommendation one way or the other by the interim committee at this time other than that it is ready for a full hearing on a final decision at the next session of the Legislature. Do members of the committee concur in that general position?

Now, is there any further opposition that should express itself for the record, so that at least our interim committee report will reflect the opposition? All right now, the Bank of America, can you make a statement for the record so we will at least know where you stand on this?

MR. BROADERS: Mr. Chairman, members of the committee, I am Halden Broaders, representing the Bank of America, and Mr. Bruns has asked me to express to you his regrets at being unable to attend this

particular meeting of the committee, and I might add that he is absent because of serious illness in his family. He has asked me to tell you that the officers of our legal department of our bank have suggested certain amendments to the pending bill and it is his understanding that Mr. Landels is agreeable to accepting these amendments. We do not yet have the exact wording of the amendments and at the moment our position is that if these amendments are favorable and in form satisfactory to us, that we will withdraw all previous opposition to the pending legislation.

SENATOR GRUNSKY: Thank you. Did you have a closing statement Mr. Landels?

MR. LANDELS: Yes, as a matter of fact, I have a letter from the chief counsel with the amendments and these are the amendments which they have approved. I do not want to discuss the merits of the bill—

SENATOR GRUNSKY: No, because you will have your day in the session next year.

MR. LANDELS: Except that I think it is very highly significant, we have given the widest possible publicity to this bill in a form which makes it very readable, all over the state and notices of it and copies I think were sent to over 40 statewide organizations of every conceivable character that might be affected by it and the fact that the only opposition presented, which is a very understandable opposition, comes from one group, I think it is a highly significant factor and even there I understand the National Association of Credit Men have endorsed the Uniform Commercial Code. As for being a banker's bill, it's one-half of the banker's bill. The bankers are unsecured creditors in the commercial field probably oftener than they are secured creditors. We're on both sides of the fence and this bill is an attempt to simplify secured transactions in personal property so as to make credit more readily available to a great many small borrowers than it is today. We are operating under many security devices today and nobody knows where they stand. For example, the cotton crop in this State is running into the hundreds of millions of dollars, is financed on the basis of gin tickets which have grown up and nobody knows whether the bank has good security or not, that if some ginner should go into bankruptcy and a trustee in bankruptcy should hold that it wasn't a document of title, the whole financing of the cotton crop of this State would cease overnight.

Our small implement dealers are in this position, they are leasing implements, they try to get financing at the bank, the bank can't take an assignment of the rentals, because then it has nothing if the lease isn't paid, it can't take a chattel mortgage because maybe that equipment he has leased is inventoried and their chattel mortgage is no good. So then they try to take sort of a hybrid trust receipt and then they don't know whether they've got good security.

We have hundreds of cases in California where small borrowers, the only way they can borrow money is to put a fence around their inventory. We can cite you case after case in which our laws now are so uncertain and so unsure that the extension of credit to the smaller businessman and the smaller manufacturer is either so tied up with so much red tape that it costs him too much or he doesn't get it at all.

As for the secret purchase money lien which Senator Weller spoke about, every purchase money lien in California now is a secret lien, it is all done in conditional sales contracts which aren't recorded at all. This bill eliminates all secret liens of every kind and character except on consumer goods. You do not want to discuss the merits of the bill here today, but I did want to get across the fact that we've given this the widest possible publicity and the opposition has very few supporters and we welcome all the constructive suggestions that we can get, but it is not a banker's bill in particular —

SENATOR GRUNSKY: Yes, Mr. Bohn, please.

MR. BOHN: I only wanted to ask this question. You have not yet furnished us copies of these latest amendments, have you?

MR. LANDELS: I have them here, yes.

MR. BOHN: Would you leave those and would you also when you have concluded your discussions with the Bank of America, or maybe I can ask the Bank of America representative to send the committee a letter setting forth the fact that these amendments are satisfactory or are not as the case may be so that the record will be complete.

MR. LANDELS: That should come from the Bank of America.

SENATOR GRUNSKY: Yes. Now if —

MR. LANDELS: To go further, Mr. Bohn, I think for use of the members of the committee, I think we should put these amendments in this little booklet in slip form so that you know that you will have before you the bill which we are discussing today and that includes certain amendments suggested by the credit men, incidentally.

SENATOR GRUNSKY: Now, addressing myself to the members of the committee as to this bill. What I suggest we do is that our committee report on this incorporate the latest amended copy of the bill, report the status of it insofar as the progress we have made in bringing it to this point, recite the organizations and the groups which are supporting it and which are opposed to it and that it be submitted in the report without recommendation for it or against it, with the understanding that it will be given a full hearing during the session at such time as the bill is called up in the regular legislative process.

In the form of a motion then, all in favor of the motion, that we follow that procedure and so report the matter in our interim committee report, signify by saying "Aye," contrary minded? Motion is carried, and from here on it will be a matter of legislative business as a bill in the regular legislative process.

MR. LANDELS: I think it is a bill of such importance, Mr. Chairman, that that is the only proper way to handle it.

SENATOR GRUNSKY: Yes, and I simply caution the opposition that the membership of this interim committee is the membership of the standing committee and if I understand it correctly we will not want to tolerate dilatory tactics of opposing it and simply "refer to an interim committee for further study" because our time as an interim committee is also valuable, might we suggest. Thank you.

SENATOR REGAN: I would like to ask Mr. Landels a question or make an observation that might be of interest to those who are interested in security transactions, if I may, the support will be the same. In one of the committees of which I am a member we have been listening

to certain racket problems in the South and I am very much interested in introducing legislation which would provide that in the sale of a piece of personal property that that certain clause which is included in the contract for example, if the seller feels that his security is not sufficient, he may recapture the property, that that has been abused to such a state, as we hear it, that when an automobile or something else is sold, the down payment was made then the party drives off in the car and a short time later when he's not delinquent somebody picks it up and sells it and then he also has a deficiency judgment against him. Now, I'm very much concerned with it and I intend to introduce legislation to correct that. Now, what effect it will eventually have on say all security transactions, I do not know, but I would like to have yours just as soon as we get up there in January to see if we can work something out that will accomplish the purpose without destroying the entire house.

MR. LANDELS: Yes, Senator Regan, I might say in that connection there will be legislation introduced in both houses and we have been doing some work on that and it may be that some of the provisions of this act—I might point out, however, that under this bill which you have before you now a distinction is drawn between consumer goods, what you're talking about and all other kinds of goods, under this bill which you have before you now, no borrower can waive any of his rights in the case of a security interest in consumer goods, you will find that in Section 5400.

In addition, this bill contains a provision which is not now found in the law, that no waiver by a purchaser of consumer goods of defenses against the seller is good even though the contract is assigned to a bank. In other words, if a person buys a refrigerator and there's no motor in it and the contract has been assigned to the bank there is a provision in there that the buyer has waived the defenses, that provision is void. In other words, we have, to some extent, in this measure, not perhaps as far as you would want to go, met some of the abuses which now exist in the consumer credit field, but it may well be if you introduce independent legislation or if the Unruh Committee does, that there may have to be certain correlation with this act. This act also contains a provision to the effect that none of these provisions in any way affect any of the regulatory acts such as the Pawn Brokers Act and the small loaner. We will be happy to work with you on that, because we are as aware of some of those abuses as you are.

SENATOR GRUNSKY: Mr. Bohn.

MR. BOHN: I only wanted to observe for the record that the committee has been informed that the County Recorders Association is opposed to this bill and I will ask again if anyone is present on behalf of that association to make a comment either for or against the bill or, to make it simpler, is anybody present from that organization? Would you want to step forward and tell us what your views are about this bill? It is my general understanding that you came a little late, the chairman does not wish a full scale debate on the bill at this time, but at least that your opposition or your general position on the bill should be noted for the record.

MR. LEE: Thank you, Mr. Bohn. My name is Ray Lec, I am county recorder for the County of Los Angeles and president of the County Recorders Association of California.

Our opposition to the bill stems primarily from our understanding of it and possibly we are not as well acquainted with it as are you gentlemen. We would hesitate to see and would not like to see the change from a system whereby local business may obtain very quickly without cost to them, other than their own cost of furnishing their personnel to obtain the information, a quick verification of those individuals who have on file chattel mortgages. This comprises approximately anywhere from 10 to 20 percent of the filings or recordings of the average recorder's office throughout the State. There are fees that are collected by the recorders in connection with these filings, and while it's only a portion of the business of the recorder, to eliminate this business and place it in a central location, it is naturally something that the recorders are interested in and in getting a better understanding of the reason for it. I have one or two questions I would like to ask with relation to this copy of the bill which I have dated August, 1958. First, has a figure been inserted on page 42, the uniform fee for filing or recording and indexing a statement of release?

SENATOR GRUNSKY: Mr. Landels.

MR. LEE: Or filing and indexing the original continuation statement on page 41.

MR. LANDELS: We haven't attempted to specify the fees.

MR. LEE: I see. I further would like to point out that in addition to the filing fee which you have at present with the county recorder, there is the further checking or verifications fee that is introduced in this bill with the Secretary of State, which does not now exist, which would be an additional cost to the agency attempting to obtain information from this file source.

Another point and I will leave you gentlemen, is the fact that this could grow to tremendous proportions. As I understand it, it embraces every portion of chattel mortgages except those relating to crops centralize in the office of the Secretary of State, as I understand it, in Sacramento. Even on a tab card installation it would be a tremendous project to get that information back to a local agency. We know a bit about it, our own granter and grantee index have card systems which run over four million cards a year and I just want to leave that thought with you. The list that would come to the county recorder in the bill would, in our opinion, not be of any value to the local agency.

SENATOR GRUNSKY: Might I ask, will your association be in a position to carefully analyze this bill so that you will not be coming forth and saying "Well, we don't understand it or we haven't had a chance to analyze it or read it." Will your legislative committee or whatever segment of your organization studies this and makes its recommendations, will you be in a position to analyze it and appear before the legislative committee in the 1959 Session in order to state your position on the merits at that time without asking for further delay and time to study, analyze and express your opinion?

MR. LEE: We will, Senator Grunsky.

SENATOR GRUNSKY: Are there any questions of any members of the committee? We thank you for coming here and we will see you next session on the same bill.

6. SUBSEQUENT DISPOSITION OF PROPOSAL

The subject matter of this bill was again introduced at the 1959 Session as Senate Bill 225 and again referred for interim study. See report of the standing committee, 1959 Session (Part II of this report).

C. PROGRAM OF CALIFORNIA COMMISSION ON UNIFORM STATE LAWS

1. INTRODUCTION

During the 1957-1959 interim studies of this committee hearings were held on the following subjects which the commission proposed to introduce at the 1959 Session.

Although not specifically assigned to the Interim Judiciary Committee for study, it was felt that consideration prior to the session would materially assist in resolving any major questions and would reduce the time necessary for full hearings later.

The subjects and report of hearings are set forth as follows:

2. FIRST HEARING, SUBCOMMITTEE ON REAL ESTATE AND PROBATE, OCTOBER 7, 1958, CORONADO, CALIFORNIA

Present:

Senator Richard J. Dolwig, Chairman
Senator John William Beard
Senator Nathan Coombs
Senator Donald L. Grunsky
Committee Counsel, John A. Bohn

Senator Dolwig called the meeting to order and introduced Mr. George Richter, representative of the California Commission on Uniform State Laws, who discussed the following subjects, indicating their present status and the possibility of their introduction at the 1959 Legislative Session.

a. UNIFORM RULES OF EVIDENCE

Mr. Richter advised that this subject will not be introduced at the 1959 Session because the California Law Revision Commission and a committee of the State Bar are now considering it and their work has not progressed sufficiently so that they are ready for introduction.

b. UNIFORM AIRCRAFT RESPONSIBILITY ACT

Since this subject is now under consideration by the Senate Aviation Committee it should not be on the agenda of the Senate Judiciary Committee. It is expected that the Aviation Committee will make recommendations with regard to the uniform act.

c. UNIFORM ARBITRATION ACT

The commission would like this matter to go forward if possible. At the last session there was objection by both management and labor as to it applying to labor controversies and an amendment was introduced to limit it to commercial matters.

The Law Revision Commission was assigned to study the subject and Mr. Dinkelspiel thought it might be ready for the 1957 Session, but they were not able to complete it. Since then the study has continued

in co-operation with a committee of the State Bar. They have not yet reached conclusions as to recommendations on the subject.

The Senate committee has withheld further consideration until completion of the Law Revision Commission's study. That study is presently proceeding with the idea of adding to the uniform act and for that reason they have not simply recommended approval of the uniform act. However, the Commission on Uniform State Laws plans to present the Arbitration Act at the next session.

Committee counsel restated the policy of the committee in regard to complex bills presented during the session, i.e., that such bills will be referred for study without further consideration during the session. If the bill is to be enacted at the next session it should be presented immediately, because the Legislature cannot be expected to consider it in a few minutes.

SUBCOMMITTEE ACTION: That the Law Revision Commission and the Commission on Uniform State Laws meet and determine what type of Arbitration Act they will present at the next session. Further consideration is to be deferred until after these groups meet and they will then make a joint recommendation to the subcommittee.

d. SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

This act has been drafted over a three-year period by the national conference with the co-operation of stock exchanges and related groups.

Mr. Richter stated that the act should be given consideration in view of the problems faced by lawyers in obtaining various kinds of stock transfers. The transfer agent of each company had to be contacted to determine the exact requirements and the differences were remarkable. Courts in the United States impose liability upon the transfer agent to look into circumstances of a transfer by a fiduciary. The English rule is contrary and no such liability is imposed if the signature is genuine and the document is in order.

The proposal is to reverse the American rule so as to make it similar to the English rule, which places no liability on the transfer agent. There is not much chance of trouble. Most attorneys and the public should not be put to the trouble of submitting all these papers.

Mr. Phil Gregory, representing the California Bankers Association, stated they would strongly favor the act, that it is brief and would simplify transfers.

SUBCOMMITTEE ACTION: That a copy of the act be sent to the subcommittee in advance so that an opinion could be obtained from the Legislative Counsel.

e. UNIFORM GIFT TO MINORS ACT

A few amendments to the present act, adopted during the 1955 Session, are being presented. These amendments will broaden the present model act to permit gifts of money for investment under the prudent man rule, as well as gifts of securities themselves. Also, it offers a choice of permitting a donor of such a gift to select as original custodian any adult person in whom he has confidence rather than restricting it to members of the minor's family. It will also permit banks and trust companies to act as both or successor custodian, which is not permitted under the model act, since a great many people would prefer to name

a bank or trust company rather than an individual it was thought that this provision was good, too.

These are the only basic changes between this act and the present statute. The present model act was drafted by the New York Stock Exchange as a model act because of the desire of the exchange to promote stocks, etc. The Uniform Act now has the backing of the New York Stock Exchange and all the security houses. The Investment Bankers sponsored that legislation, but haven't taken any position on it yet. However, within a matter of weeks they expect to take action.

SUBCOMMITTEE ACTION: Place the subject on the agenda for the next meeting.

f. UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACTS

This proposal would permit any authorized officer whose signature is required on a bond issue or on checks to use a facsimile signature, so long as on bond issues at least one of the signatures is manually subscribed.

This act was drafted by the national conference at the request of the Council of State Governments because of the demand among state officials for such an act.

The act is simple and would apply to municipal bond issues also. The signature is filed under oath with the Secretary of State and thereafter has the same effect as his manual signature. A facsimile seal is also provided for in the act and a provision for violation of the act for fraud, etc.

The act has been submitted to various departments of the State for their opinions and replies are expected prior to the next meeting of the Judiciary Committee.

COMMITTEE ACTION: That a followup letter be sent to the various state departments and the matter be set for the next committee meeting.

g. AMENDMENT TO UNIFORM PRINCIPLE AND INCOME ACT

As originally drafted and adopted this act did not contain any provision for the disposition of income during the period of administration of the estate and there has always been some question as to just what should be done with respect to the income which has accrued during the period of administration and before the trust actually comes into being upon the conclusion of the administration. This would simply provide the ordinary rule that income goes to income and would be classed as income in the hands of the trustee, except if the will makes some other provision for the income.

It is a very minor law drafted by Mr. George Bogert, expert on trusts.

SUBCOMMITTEE ACTION: That the matter be placed on the agenda for the next meeting.

h. AMENDMENT TO UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

This amendment was requested by the Internal Revenue Department. The Internal Revenue Code now provides that the federal government has a lien for taxes which is effective immediately upon assessment, but is not good as against mortgagees, purchasers or pledgees until the notice of lien has been filed. The code has always provided that it be filed with federal court unless the State has adopted another means or place for filing those notices.

The Uniform Act was drafted in 1926 to supply the vehicle for the filing on a uniform basis throughout the country and we have it in California but it is not as yet codified. It is still under the general laws and should be codified.

The Bureau of Internal Revenue has also requested an amendment so as to clarify the situation with respect to partial releases of property from the lien. The Uniform Act only provides for the filing of the lien with the county recorder and also a complete release of the lien, but there is nothing in the law to provide for partial releases which have since come into the internal revenue laws. A simple amendment would take care of this situation. A bill prepared by Legislative Counsel's office would codify it into the Revenue and Taxation Code as well as adopt this amendment.

I. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

This act has done a great deal on the problem of absconding fathers. A number of amendments are being proposed. It is an important problem and should be considered. Mr. Richter advised the subcommittee that he did not know enough about the technical amendments to explain them but stated that the Los Angeles County District Attorney's office is very interested in these amendments and would like the committee to consider them. Also, that Senator Farr is interested in this subject.

Senator Beard then expressed the hope that copies of this act be sent to district attorneys in every state because 90 percent of them are just not co-operating with the State of California on the matter.

SUBCOMMITTEE ACTION: That this subject has real social impact and will be considered again at the next meeting of the committee in order that it can be acted upon during the 1959 Session.

3. SECOND HEARING, FULL INTERIM COMMITTEE

Hearing: December 4, 1958, State Building, Los Angeles. Senate Interim Judiciary Committee, Donald L. Grunsky, Chairman.

Present:

Senator Donald L. Grunsky, Interim Committee Chairman
 Senator Edwin J. Regan, Chairman, Standing Committee
 Senator Stanley Arnold
 Senator James E. Busch
 Senator Carl L. Christensen, Jr.
 Senator Nathan F. Coombs
 Senator Richard J. Dolwig
 Senator Fred S. Farr
 John A. Bohn, Committee Counsel

Witnesses:

Harold Pressman, Deputy District Attorney, Los Angeles County
 George Richter, Commission on Uniform State Laws

Subjects Considered at This Hearing:

- a. Uniform Simplification of Security Transfers Act.
- b. Uniform Gift to Minors Act.
- c. Uniform Facsimile Signatures of Public Officials Act.
- d. Uniform Reciprocal Enforcement of Support Act.

The hearing on the above designated subjects proceeded as follows:

MR. RICHTER: For the record my name is George Richter, I am a member of the California Commission on Uniform State Laws, my address is 458 South Spring Street, Los Angeles. The first item we have on the program is the Uniform Act for Simplification of Fiduciary Security Transfers. This act was drafted by the National Conference of Commissioners at the request of the House of Delegates of the American Bar Association. In 1956 the House of Delegates passed a resolution which read as follows:

WHEREAS, The responsibility of corporations to inquire into the propriety of transfers of their shares is an anomaly never included in the common law and equity of England; and

WHEREAS, This responsibility is anachronistic in the light of the modern rule of negotiability of shares; and

WHEREAS, Three states, Ohio, Pennsylvania and Wisconsin have adopted simplifying acts which may serve as legislation precedents, now, therefore,

Be it resolved, The legislatures of the respective states are urged to adopt statutes which will eliminate the present excessive burden of documentation required for the transfer of stock by fiduciaries.

I think you all as lawyers are familiar with the problem which this act attempts to meet. When an estate which you are probating contains shares of stock or registered bonds and you try to get those transferred, the number of differing requirements that you find among the various corporations or transfer agents makes your job very difficult. The basic reason why it is difficult and why these transfer agents and corporations have these varying requirements is that they have had a duty under the law of this country to inquire into any transaction in which a fiduciary appears as making the transfer.

In England that was not true; there so long as you have evidence of the existence of the fiduciary as such you didn't have to go into the nuances of his exact authority to make that transfer in order for the corporation to make it and be free of liability. The result has been that here all of us as lawyers, and of course our clients as well, have been put to a great deal of trouble and expense which has only served to benefit a relatively very few people. It is only in the very occasional case that a corporation or a transfer agent who will really pick up a transfer by a fiduciary in breach of trust. Many have been put to a great deal of expense for the purpose of saving the few.

So this bill adopts the English common-law theory of the lack of responsibility of a corporation or transfer agent to inquire into the exact scope of the authority of the fiduciary to make the transfer. It was drafted by, as I say of course, the National Conference of Commissioners on Uniform State Laws, but not in a vacuum. We had an advisory committee set up which consisted of representatives of the New York Stock Exchange, the American Society of Corporate Secretaries, the Corporate Transfer Agents Associations, the New York Stock Transfer Association, the Association of Casualty and Surety Companies and the Surogates Association of the State of New York.

The bill actually follows pretty closely in pattern the existing bills which are in Illinois, Delaware and Connecticut. The act doesn't attempt to deal with the transfer of a forged or an unauthorized signature, it doesn't change any rule of law applicable to that. The corporation or transfer agent is still responsible for the validity of the signature which goes on any transfer. But what the act really does is just

limit the liability of the corporation or transfer agent so long as it has a valid signature or if the fiduciary, the executor or the administrator say, is not the registered owner of the security, but attempts to make a transfer, their only liability is to see that he is executor or administrator and a certified copy of the letters would be sufficient for that purpose. Other than that their only responsibility is to see the validity of his signature.

Thus, what the act really does, in a sense, is relieve the corporation or transfer agent from any liability beyond these two points I just mentioned when it transfers securities on a transfer executed by a fiduciary. The name "fiduciary," of course, includes not only your ordinary executor-administrator, but also trustees. The way the act works pretty much follows by going down through the sections. The first section of the act, Section k, is simply giving the definitions. Section 2 provides for registration in the name of a fiduciary. Now that means that if I, George Richter, have some stock registered in my name and I am going to transfer it to a trustee, all I need to do, is sign my name as the assignor of the certificate of stock and put, say John Bohn's name on that certificate as the trustee. The corporation then has no obligation to inquire into John Bohn's authority as trustee. I have executed my valid transfer of the security to him and by doing so I have designated him, in effect, as the person who is going to exercise the powers. So that is the limitation in that situation of the corporation's liability. Section 3 takes up the situation where we have an assignment by a fiduciary.

MR. BOHN: May I ask a question. Would you prefer to go right on through the bill or would you object to interruptions as you go along?

MR. RICHTER: Not a bit, either way.

SENATOR GRUNSKY: I think it is better to interrupt as you're thinking of the points. Personally, I would rather have that, Senator Dolwig.

SENATOR DOLWIG: Section 2 doesn't change the existing liability. For example, you gave the corporation—any liability if the stock was registered in Mr. Bohn's name as trustee. The only liability that could arise would be later on.

MR. RICHTER: Yes, I think the section covers that, Senator Dolwig. Where it says "thereafter the corporation and his transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that he is no longer acting as such."

SENATOR DOLWIG: That's the change?

MR. RICHTER: Yes.

SENATOR DOLWIG: Thank you.

SENATOR REGAN: May I ask a question?

MR. RICHTER: Yes, Senator.

SENATOR REGAN: Now I understand that assuming the adoption of this language, that if I addressed a letter to a corporation in the East saying that I hold such a fiduciary relationship that without any further inquiry they will just change it into my name?

MR. RICHTER: No, no, Senator.

SENATOR DOLWIG: That is the way it sounds, now if you can clarify that for me.

MR. RICHTER: Well, if I am transferring it to you, Senator, as trustee, I have to, of course, present the certificate with my authorized signature upon that certificate.

SENATOR DOLWIG: If you are the owner of the shares.

MR. RICHTER: I am the owner of the shares.

SENATOR DOLWIG: Now, let's assume a decedent, that the owner of the shares is deceased and assume that tertiary situation comes into being and that you want the share transferred in the name of the fiduciary or John Jones trustee or something, with the mere sending of a letter without any further identification it will suffice?

MR. RICHTER: No, it would not, Senator. Section 4 of the act covers that situation. There the corporation or transfer agent would be required in the case of a fiduciary appointed or qualified by court to get a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer.

SENATOR DOLWIG: Pardon me, that is not any different from the law now.

MR. RICHTER: That is correct, that is no different from the existing situation.

SENATOR DOLWIG: To clarify it then, this act does not change the basic requirements insofar as transfers are concerned, it merely limits the liability of the corporation. Would you simply outline in what instances it restricts the liability of the corporation?

MR. RICHTER: Yes. Well, it is a little different from what you say, sir. Number 1, in the instance where you are simply transferring it into the name of a fiduciary, we do not have any great difficulties today. If you have an executor or administrator, you give a copy of the letters and they will transfer it into his name as executor or administrator.

SENATOR DOLWIG: I have a situation right now where the trustee for a minor. Of all the transfer agents—letters regarding—so there is no problem there.

MR. RICHTER: There has been no existing problem there of any great magnitude, but the problem has come in when you have a final distribution say of your estate and there you send them the certificates and they come back and say "We want a certified copy of the will, we want a certified copy of the decree of final distribution, we want a certified copy of this or that and the other thing in addition," and that is the point at which this act really takes effect and remedies it because it relieves the transfer agent from any liability to inquire into the authority of that fiduciary to make that transfer.

The thing the law professors kicked about somewhat in the situation is why shouldn't the transfer agent or corporation be on liability if they transfer stock which is registered in the name of a fiduciary to that fiduciary in his personal capacity and it sounds very logical but actually a great many transfers are of that character and are bona fide because a widow, for example, is so many times the executor or administrator of the estate and she is going to be transferring that security to herself because she is going to receive it under the estate. In all of

these situations we have either in the case of an executor, of course, if he is the person who is appointed by the testator we can assume that the testator trusted him and that if there is any loss it should be because of the testator's trust, not put on the transfer agent. I am not saying this because I sympathize with the transfer agent, but because I think that because they do have this liability in some possible cases, then they put all of these extra burdens on everybody else to satisfy them so they don't have any liabilities.

SENATOR DOLWIG: They want the will, they want the letters, they want the final report and decree of distribution and everything?

MR. RICHTER: That is correct.

SENATOR DOLWIG: Well, would you say under the new law all that would be required would be letters of administration and that would be it.

MR. RICHTER: And that would be it, because once the transfer agent had the letters of the administration he would assume that that administrator had the right to transfer it.

MR. BOHN: Suppose the administrator had been removed?

MR. RICHTER: Well if you have notice, we have not come to that provision, but if there is notice to a transfer agent of any removal, then, of course, the transfer agent would no longer be——could act under the certified copy of letters.

MR. BOHN: Assume some of this stock never appeared in the inventory, people might not, let us say, even know it existed sufficient to send notice.

MR. RICHTER: That is a possible situation. Of course, if he is an executor he would be without bond, if he is an administrator he would be under bond and have liability anyway and there would be a bond in which the persons interested in the estate could have recourse. The proposition, is there other places where a recourse could be had. There is nothing in here which absolves the fiduciary from liability he has or his bond, if he has a bond up in this capacity. And in any other case the fiduciary has been picked by the person who had the property and he would put his trust in him and the real issue that we thought this act would be justified on was not to relieve transfer agents from liability, but to keep all the rest of us, the very many of us from having to comply with all these requirements just in order to satisfy the transfer agents who wanted to protect themselves against that possibility in a relatively few possible situations.

MR. BOHN: Is this a fair statement then, that what you intend to do by this bill is, in effect, to take away the policing power whenever it exists insofar as the transfer agents are concerned. In other words, there is just the ministerial act or clerical act.

MR. RICHTER: I think that is a pretty good summary of it.

MR. BOHN: And the fraud, if any that exists, exists elsewhere and your idea then or the idea of this bill then simply is that it is just everything the transfer agent is entitled to assume everything at its face value and anybody else who may be adversely affected by a fraud must have whatever his remedy may be.

MR. RICHTER: That is correct. And that is the English rule which has been prevalent in England all during the years.

SENATOR CHRISTENSEN: In other states apparently it has been enacted, is it possible for the transfer agents to make any inquiry beyond the—production of the copy of the resolution.

MR. RICHTER: Well, they do every place where there has not been a law similar to this enacted and the other states, the several which have a law similar to this, it is based on the same pattern. The only way you can get the transfer agents not to make all these requirements is to say, "you don't have any liability."

SENATOR CHRISTENSEN: Of course, the transfer agent would today be deemed to know the limitations a fiduciary's authority, such as the problem of transferred stock and, of course, the administration prior to distribution without the court authorizing the sale. In those states where this uniform law is in effect does the transfer agent still require a court order authorizing a sale?

MR. RICHTER: Well, let me clarify that. The uniform law is not in effect in any state yet because it was just finished this last August. It is now going—they have model laws which are similar to it. In those states I understand that the transfer agents have accepted the acts and are not making these requirements of proof of authority to make the particular transfer. In other words, they are really observing the law.

SENATOR CHRISTENSEN: This state, this would be the first state to have this particular broad power of liability on transfers.

MR. RICHTER: No, because you have these other states which have exactly the same principle in these other laws of theirs. We anticipate that this law will receive very wide acceptance because there is a special committee of the American Bar Association set up to project it through the states as well as our own National Conference of Commissioners on Uniform State Laws and I understand that the Investment Bankers and the New York Stock Exchange are also very much interested in it. They have a lot of bad public reactions from these requirements of getting all these things in and they would like to get rid of them too for that reason.

SENATOR CHRISTENSEN: . . . In this case the court would be determining the necessity for transferring all those things which may be some item prior to the time takes place.

MR. RICHTER: Well, that is possible under this act, of course, if the executor or administrator is acting beyond his powers, without proper court authority he may be liable. He has a bond; his bond would also be liable.

SENATOR GRUNSKY: Mr. Bohn?

MR. BOHN: What is the reason, the theory of the existing law that a transfer agent should be liable under these circumstances? As I understand it, this is a piece of paper evidencing an ownership in the corporation for a proportionate amount. The person has responsibilities to the corporation and the corporation has responsibilities to the stockholder. The transfer agent is just an agent for the purpose of transferring that evidence of ownership from one person to another, now where does his liability stem from?

MR. RICHTER: It stemmed from a doctrine that grew up that if any facts came to his knowledge or facts which should charge him with notice that there was anything wrong with the transfer then he had a

duty, in effect, to the persons beneficially involved not to make the transfer. Therefore, they wanted every possible evidence of authority to make that particular transfer and that has led to all of these requirements.

MR. BOHN: I would like to interrupt—you don't mind if I interrupt?

MR. RICHTER: No, surely not.

MR. BOHN: Well, I can certainly see the reason for rule that if the transfer agent knows of any limitations on the authority of the transfer or any other problems involved in the transfer, he would certainly be negligent in his duty if he didn't do something about it. Now would this relieve him of that responsibility? Let's assume the transfer agent had personal knowledge, or the bank should have had knowledge of this thing.

MR. RICHTER: Mr. Bohn, this act, of course, does not do away with any possible liability that a transfer agent might have as a participant in any fraud, but apart from that it does relieve him from liability, because we know that the only way in which you can get transfer agents not to require all these documents is to put in a broad rule relieving him from liability.

MR. BOHN: If, in fact, the transfer agent had knowledge of lack of authority of the fiduciary transferor, he nevertheless would be protected in effectuating the transfer on the theory, it is not his responsibility to police it.

MR. RICHTER: Yes, I think that is right.

SENATOR BUSCH: Why didn't you follow the Uniform Fiduciaries Act, which requires that he act in good faith or something like that?

MR. RICHTER: Well the Uniform Fiduciaries Act attempted to meet this same problem, Senator Busch, but it still imposed liability on the transfer agents if they acted without good faith or some language like that in that act, and the transfer agents themselves would never recognize that act because they said "we still have a possibility of liability here because somebody may say we didn't act in good faith, so therefore we are still going to require all of these documents in each case of a transfer that comes before us so cannot be charged with not having acted in good faith." So the Uniform Fiduciaries Act, which attempted to hit the same problem, just was not successful in doing it. We found that as a practical matter the only way in which you could get the transfer agents to go along and say "we won't require all of these extra documents" was to say "all right, you just have no duty to police the transaction at all."

MR. BOHN: But if he actually has knowledge of it?

MR. RICHTER: I would agree with you, John, as a lawyer, that if you did put any such provision in there that the large institutions, the clerk down the line over here whether his knowledge is going to be imputed in the Banking Department, let's say to the Trust Department who is making stock transfers and all of the other problems that come up there in connection with knowledge or notice, you have defeated the whole purpose of the act. If you really want to get away from all of this rigmarole that the transfer agents and corporations have required we

have found through the experience over the years that this is the only way in which it can be done.

SENATOR DOLWIG: Mr. Chairman, follow through on that, say that the transfer agent had notice of an adverse claim, then transferred in derogation to that claim.

MR. RICHTER: There is a specific provision on a notice of an adverse claim. In any case where the transfer agent has notice of an adverse claim he does not have to make the transfer. If the transfer agent desires he can give notice of that adverse claim to the person who presents any certificates for shares or transfer—

SENATOR DOLWIG: I understand that, but now let's go back, he has notice, but despite the notice he goes ahead and makes the transfer on the basis of the original request, do you say that under those circumstances he would not be liable?

MR. RICHTER: Oh no, he is liable, yes.

SENATOR GRUNSKY: Has this act been adopted by other states yet?

MR. RICHTER: Not yet, it has been promulgated as of last August and is just up for adoption now. I believe almost every state will have it in for consideration this year, how many will adopt it, of course, I don't know.

SENATOR CHRISTENSEN: . . . is one of the reasons for not heretofore relieving the transfer agent from liability but securities policy would not be transferred in violation of the fiduciary . . . you would be able to attempt to do so as . . . successful. There is one of the reasons for requiring the state. . . . But he shouldn't transfer the stock without a court order then he would not be inclined to do it. Under this proposed bill he could do that without a court order. All you need is a copy of the letters, whereas the committee can consider whether any (noise) . . . he is the guy that checks on it. . . .

MR. RICHTER: Well, it is a question of how far you want to put a lot of innocent people to trouble and expense and time to protect the few instances or relatively few instances where somebody is going to commit a wrong of that kind. If it could be done without all of this problem for the innocent, it is one thing, but we reached the decision on balance that in this situation where the person who would commit the wrong is, number one, liable himself if he hasn't been picked by the owner of the property and trusted as an executor say or trustee, he has been appointed by a court with a bond so that there would be recourse on a bond and have all of your other remedies, this doesn't mean that the person who took this stock in fraud, let's say, would have good title unless he was a bona fide purchaser. You could create a constructive trust.

This act is only trying to deal with that narrow problem of getting the transfers of the stock out from under all of these requirements of the transfer agents so that they can be freely made and we can all save ourselves a lot of time and trouble in the myriad instances we have where there is no problem of breach of trust.

SENATOR CHRISTENSEN: (noise) . . . this has never. . . . Legal transfers of securities for generations . . . duties of fiduciary and also on transfer agents. Whether or not there is a good sound reason for having that I don't know, for one thing they properly check the . . . up

there in our country where we have so many people from out of state come in . . . court can acquire the . . . limited application, an application for letters of administration . . . as to what this State is sometimes. A parent may have a personal fund which (noisy) . . .

MR. RICHTER: Well, I can see your point, Senator. I don't want to say, well this particular act the Uniform Act has not been adopted in the other states. These other states, at least these three, have adopted acts which also exonerate the transfer agents and corporations from liability on the same theory that the Uniform Act here does.

SENATOR CHRISTENSEN: Do those states eliminate the (noisy) . . . or anything but (noisy) . . . administration?

MR. RICHTER: It is my understanding, yes sir.

SENATOR DOLWIG: On page five, do you know that liability was imposed in one of those three cases? Harris Bros., General Motors and First National Bank, Pittsburg (noisy). Is the transfer agent there held responsible for any action of his?

MR. RICHTER: I am not familiar enough with those cases to account on it.

SENATOR DOLWIG: I was just wondering, it might give us a clue as to what the practice in the situation would be—

MR. RICHTER: I have not read those cases, I have forgotten what the discussion I have heard of them was.

SENATOR DOLWIG: Well, evidently those may have been under the Uniform Commercial Code provisions the way—

SENATOR GRUNSKY: Incidentally, members of the committee, how far do you want to go with the hearings on this program in, of course, not only this afternoon but if it goes over till tomorrow. Do you want to try and make a decision on these or do you think you might be able too, to avoid the necessity of a full hearing and also on some of these—when you have your hearings of your commission, do you have any opposition or are you just working on the technical language of it?

MR. RICHTER: Well, we may have opposition—

SENATOR GRUNSKY: Well, that is what I am getting at. Mr. Landels—is some of this going to—

MR. LANDELS: (noisy.)

SENATOR GRUNSKY: That is fine, but the thing I wanted to be sure is that we are giving a full hearing to these so that if we make a decision we know we have gotten all sides of it. Well, then, let's go on with it because if we are going to spend this much—

MR. LANDELS: My questions were just to point it out. I am not opposed to the bill in any way.

SENATOR GRUNSKY: Oh no, but my point was this, that if we do understand it at this time well enough to make a decision, let's make it, but I just wanted to make sure that the committee wanted to do that.

SENATOR DOLWIG: I think you have the problem here that we don't know what opposition there would be, if any.

SENATOR GRUNSKY: Well, that's it, and that's why if that's the case then I would discourage spending too much of Mr. Richter's time and our time carefully analyzing it if we are going to have to do it all over again in the face of opposition in the audience.

MR. RICHTER: I don't know if that would be true of all of the acts in our program. I don't believe there is any opposition to this one from any source that I can conceive of.

SENATOR GRUNSKY: Yes, well then we could take conditional action on these and if no opposition turns up when the public has had notice in a session there would be no need to go through every detail of the measure which could take a whole morning at a Judiciary Committee meeting. Frankly, I know of no opposition that comes to my mind, why I would not support this and if the rest of the committee feels the same way we can take conditional approval and then if opposition appears in the committee, fine, if not, there would be no reason for a long and detailed explanation during the session, that is the point I am getting at. Are there further questions of the committee so we know we understand what this thing does?

MR. BOHN: What is the reason for a transfer agent in the first place?

MR. RICHTER: Well, simply to take the burden off the corporation staff for making the transfers and provide a more central place perhaps in the offices of the corporation for it.

MR. BOHN: The reason I asked the question is if you simplify all this procedure isn't it going to in part at least do away with necessity of special transfer agents in these matters? If it becomes a clerical act?

MR. RICHTER: It could very well.

MR. BOHN: Mr. Landel shook his head on that.

MR. LANDELS: I think this is only a fraction of the transfers that are made, I think you'd still have your transfer agents. The point I wanted to make in answer to Senator Christensen's question. The protection afforded the estate here is really more imaginary than real. For instance, you get an order to sell corporate stock, sure you get the order, but you can put all the money in your pocket and walk away with it. The fact that the transfer agent checks to make sure whether you got an order authorizing sale of the stock really hasn't very much significance, and the estate has no protection on bearer's securities, on bank accounts, on cash and on personal property, and all the law does now is make some clerk up in a transfer office a policeman of the probate of an estate. We had a case in which the stock was distributed a third to the daughter and two-thirds to the widow, a large volume of securities and they agreed to a division, it took us about six months before we satisfied the transfer agents. We feel that it would simplify transfers and the Investment Bankers Association is strongly in favor of it.

SENATOR GRUNSKY: Well, now on these uniform acts, being a uniform act presumably we do not have to fret or worry about the technical language, because it has been carefully studied and drafted by the 48 states, presumably, am I correct on that?

MR. RICHTER: Well, yes, we hope that that is the case, we think so.

SENATOR GRUNSKY: But I mean as far as technical perfection that we should have that in the language of the bill.

MR. RICHTER: I think we have pretty well covered the bill by our first questions and answers here.

SENATOR GRUNSKY: Does someone want to make a conditional motion then that on this one here that unless some opposition appears

in the session that it has the approval of the interim committee and there would be no need for a detailed presentation at a meeting of the standing committee?

Motion is made, all in favor signify by saying "Aye"—contrary minded, motion is carried. Well, that is fine then, we are making some headway, that is the main thing. Now the second one is the Uniform Principle and Income Act, how about that one? Incidentally, we are not going to finish all of this today and you can come back tomorrow, can't you?

MR. RICHTER: I think in view of the limited time we will take up the amendment to the Uniform Principle and Income Law. Some years back, I have forgotten the exact date, we adopted the Uniform Principle and Income Law in California. There was one omission in that law in determining principle and income and that was the income of an estate during the probate proceeding and before it was distributed to the trustee. The amendment here simply covers that one portion, in other words, the probate income during the period of probate. The sections as they would apply, the first section, 730.05A, would apply only to executors and trustees acting under wills of testators who die after the operative date of this section and whose wills are admitted to probate in this State. It does not apply if a contrary provision has been made by the testator or by the executor or a trustee under the will pursuant to a power given him by the testator.

Sub 2 provides a method for determining the net probate income, first by ascertaining the amount of property received by him which is the product of the property which passed to him by the will or by the execution of a power of appointment or of any substitute for such property obtained by the executor by purchase, exchange or otherwise. B, he shall include in the amount so ascertained the product of the property used by the executor to discharge liabilities of the testator or of the executor in his representative capacity, including legacies payable in money and interest thereon or of any donee under the will. C, he shall determine how much of the amount so ascertained is classed as income under the other sections of this chapter. D, from the amount so determined he shall deduct any income taxes paid thereon by the executor, except taxes on capital gains, and that share of the expenses of administration which is properly payable out of probate income. The amount remaining after the deduction is the net probate income.

Sub 3 then provides for the distribution of the net probate income. A, pay over to the trustee of any trust or other legatee to whom specific property other than money is bequeathed the net probate income of such property. B, pay over all other net probate income to the trustee of any trust created out of the residue and to any legatee for life or years of any portion of the residue and to any legatee of an absolute interest in any portion of the residue and to any trustee of a sum of money under a trust created by the will but not payable out of the residue in prorate shares in accordance with the respective values of the property bequeathed or given in trust at the death of the testator as determined by the executor.

The executor makes a partial distribution to any legatee or trustee under subsection 3B, the partial distributee shall share in the net pro-

bate income collected to that date but his share in the net probate income later collected by the executor shall be reduced accordingly. Sub 4, the amount of any net probate income distributed by the executor to each trustee or other distributee shall be stated in any distribution decree. The last provision, a testamentary trustee who receives from an executor net probate income shall treat it as income of the trust for which he is acting. Basically, I believe these rules are the same as those set forth in the Uniform Principle and Income Act now on the books as far as the ascertainment of the income and that these provisions which would be adopted by this amendment simply put into effect what is the general practice of the courts at the present time in determining what is probate income and who is entitled to it.

SENATOR REGAN: What is the necessity for subdivision 5 there on page 3? Are there circumstances where the testamentary trustee would not treat them as such upon receipt from the executor?

MR. RICHTER: Right.

SENATOR REGAN: Are there specific situations which require this section? I'm just curious.

MR. RICHTER: Senator, I just do not know if I can answer that question, I have forgotten the discussion on it and why it is there. Mr. Von Hursen calls to my mind the fact that they used to treat any that was distributed to the trustee as principle in the hands of that trustee so he would not then pay it over, say, to the beneficiary who was entitled to the income of the trust and the purpose of this provision is to make it clear that income during probate when paid over to the trustee would be treated by him as income and go to the income beneficiary.

SENATOR REGAN: Thank you.

SENATOR DOLWIG: In other words then the testamentary trustee would report that as income to the testamentary trustee say, for instance, the transfer was made in November and even though the transfer was made in November, even though the income was for the major portion of the year in an estate, would this provision provide that the testamentary trustee would report the entire 10 or 11 months' income as income for the trust, rather than to the estate?

MR. RICHTER: I think that would be the effect of it, Senator. I think you are thinking of it in terms of tax, income taxes.

SENATOR DOLWIG: Yes.

MR. RICHTER: I think that would be the effect of it.

SENATOR DOLWIG: You will have trouble there won't you?

MR. RICHTER: Would it?

SENATOR DOLWIG: You might have in an estate where you have a material income this could affect your legatees and your devisees insofar as responsibilities are concerned, the amount of taxes for which they would eventually be liable which might bring some rather strange results.

MR. RICHTER: Well, would the result be any different? Mr. Von Hursen just called my attention to the fact that, of course, this would not change the rules insofar as federal income tax rules are concerned, which is set by the Internal Revenue Code rather than by this act or any provision thereof. If the probate income at the present

time is distributed during the year to a testamentary trustee are there two separate returns that would be filed, one by the executor and one by the trustee?

SENATOR DOLWIG: No, would it?

MR. RICHTER: I don't know the answer to that either, sir. I do not think that anything in this would affect the tax position of it.

SENATOR DOLWIG: But, maybe this is very fundamental, but insofar as the income of the estate is concerned the executor, it is his duty to pay the income tax each year, isn't it?

MR. RICHTER: That is correct.

SENATOR DOLWIG: That means that, what I'm talking about is this could affect certain distribution here because that comes off on top. Now you take, you have a testamentary trustee that affects maybe only one or two or three of the heirs, it doesn't affect the others, the others are only affected by a decree of distribution, you have a testamentary trust which is going in and you make a distribution to the testamentary trustee, he then merely reports what he receives for that portion of the income from the probate estate in the trust, which would materially affect the financial position of various heirs and the estate.

MR. RICHTER: Well, I don't see where the transfer of the income by the executor upon distribution to the trustee is the type of transaction which creates income in the hands of the trustee.

SENATOR DOLWIG: Yes, you can, where you have residuary heirs, with material respect to the thing because under the laws, you may take the money that would ordinarily be coming from the residuary heirs to pay the expenses of the estate. See? We just recently had one of those problems and it got pretty involved.

MR. RICHTER: Do you feel that this particular provision is objectionable, it should be —

SENATOR DOLWIG: I don't know, but I think we ought to maybe be sure what the effect would be.

SENATOR REGAN: Are we still talking about 5?

MR. RICHTER: Still talking about 5.

SENATOR REGAN: Is there any necessity for language to be added to that similar to "unless otherwise directed by the terms of the trust"?

MR. RICHTER: I believe that that is already taken care of in the first section, this whole section does not apply if a contrary provision has been made by a testator or by —

SENATOR DOLWIG: Mr. Chairman, may I suggest insofar as 5 is concerned that there ought to perhaps be a further checking on and related to the provisions in the Probate Code relative to the priority of the funds to pay expenses of the estate, which could affect this situation. It might not apply in other states, that's what I am wondering about because our laws are different insofar as the expenses —

MR. RICHTER: Well, I will certainly do that before the session. Incidentally, the draftsman of this is George Bogert, who is probably well known to all of you and he will be at Hastings again after the first of the year and I will refer these questions to him so we will have answers for them before the session.

SENATOR DOLWIG: It might be all right but I think we ought to —

SENATOR GRUNSKY: Well, do we have a uniform act now?

MR. RICHTER: Yes.

SENATOR GRUNSKY: And this is just a proposed amendment to that act?

MR. RICHTER: This is just simply an amendment to that act.

SENATOR GRUNSKY: To conform to what others states are doing or what?

MR. RICHTER: Well, this amendment again, has just been promulgated by the national conference.

SENATOR GRUNSKY: Presumably all states will adopt it. Are there any further questions?

SENATOR GRUNSKY: The thing is to take advantage of what thought we have given to it to this point. Senator Dolwig, what is your thought, I mean do we know enough about this thing? Do you—

SENATOR DOLWIG: Well, we can do the same as the other—

SENATOR GRUNSKY: I don't think that is our problem, it is a question of what we can or want to do. Mr. Gregory, do you have something on this? Is this of interest to your people?

MR. GREGORY: Philip Gregory, California Bankers Association, Mr. Chairman. I do not know if it is necessary to make any formal reservations or any rights here, but I have several pages of objections or suggestions and I do not think it would be proper to go into them, one by one, they are just technical and Mr. Richter and I have already agreed that we are going to work it out, I am sure satisfactorily.

SENATOR GRUNSKY: All right then, in other words you are in favor of the proposal, when you say technical—

MR. GREGORY: We have some technical points that we think should have further study, that is all.

SENATOR GRUNSKY: Well, if they have merit presumably then they would go to other states too, would they not, if they are technical?

MR. RICHTER: Yes, if there is sufficient—sometimes we get into disagreements on technicalities which are not the substance, but—

SENATOR GRUNSKY: Well, on this then might I suggest that for . . . John, now on this one apparently there is no basic opposition to the idea of what you are trying to do, we are agreed on that, Senator Dolwig, aren't we? And then with the technical amendments etc., can you and Mr. Gregory get your technical amendments together and see that what goes into our committee report is your technically amended best draft and then that, if Senator Dolwig will make the motion, we will take it under the conditional arrangement that if there is no opposition as far as this interim committee is concerned, we are giving a favorable recommendation which eliminates the necessity for a complete explanation and hearing during the session. If there is opposition then, of course, we will have to reconsider all points.

SENATOR DOLWIG: Well, I can assure you I will get together with Mr. Gregory.

SENATOR GRUNSKY: That motion is before us. Everyone in favor of the motion signify by saying "Aye," contrary minded, the motion is carried. Now that will take care of that, but you are going to have to get the material to Mr. Bohn so that we will have the proper draft for our committee report.

Hearing continued on December 5, 1958, as follows :

MR. RICHTER: The next item on our program with the Commission on Uniform Laws is the Uniform Gifts to Minors Act. Four years ago we passed, in California, a model act on gifts of securities to minors, which had originally been drafted by the New York Stock Exchange and I guess the Investment Bankers Association. This act was applicable only to gifts of securities to minors; it received quite a bit of adoption in the states, I think some 10 or 12 states adopted that act. The purpose, of course, of that act and of this one is to provide a simple and inexpensive method whereby gifts may be made to minors. We know the natural impulses of parents, grandparents, uncles, aunts to make provision for their children or relative minors and this would appear to be something which we should encourage.

This act was drafted after the need or desire for such an act became apparent through the adoptions of this model act prepared by the New York Stock Exchange and at the suggestion of the Council of State Governments, the National Conference of Commissioners then proceeded to prepare and draft the Uniform Gifts to Minors Act. This act differs from the model act which we now have on the books only in a few relative respects. In substance, there is a substantial difference in form, it's set up a little differently, we think a better drafted act, although there might be dispute about that. The Uniform Act broadens the model act to permit gifts of money as well as of securities to minors. It also permits the custodian, under the act, to invest or reinvest the money under the prudent man rule which is prescribed in the act. It also broadens the model act by permitting the donor to select as an original custodian any adult person in whom he has confidence, and also a bank or trust company. Formerly and under present law this would have been limited to adult members of the minor's family. This act, the Uniform Act, was approved by the National Conference I think three years ago and in that short period of time it has been enacted in 29 states, so you can see that there has been a very substantial acceptance of the act, and probably within the next few years it will have received even broader acceptance.

SENATOR GRUNSKY: Is there any difference in the language of these acts that have been enacted in the various states or are they taking it pretty much word for word?

MR. RICHTER: I believe they have taken it pretty much word for word, Senator.

SENATOR REGAN: I would like to ask a question. In your definitions, what is meant by a custodian and guardian and so on, you have a tutor in there. I have never heard the word used as it seems to be here and I am just wondering where it is used?

MR. RICHTER: It is used apparently in some states as a substitute or alternative to guardian, we don't have it, of course, in this State.

MR. RICHTER: I think as you may recall in connection with the model act which we have here and which you passed on four years ago, the general scheme of the act is anyone who wants to make a gift of securities and in this case, money, to a minor, simply sets up, let us say, if it's a stock certificate, he has the stock registered in the name of so-and-so as custodian, let's see the exact language here, "as custo-

dian for the name of the minor under the California Uniform Gifts to Minors Act." Now the effect of simply registering the security in that way brings into play all of the provisions of this act regulating that relationship prescribing the duties and powers of the custodian, his accountability, etc. If it is money that is being given he has to set it up in an account in the name of the donor or another adult person or a bank with trust powers followed in substance by the words "as custodian for the name of the minor under the California Uniform Gifts to Minors Act."

SENATOR ARNOLD: In other words, it must refer to the act in the designation of the registration.

MR. RICHTER: That is correct.

SENATOR ARNOLD: Can that be in the name of the donor?

MR. RICHTER: It can be in the name of the donor.

SENATOR ARNOLD: That applies to securities as well as to a bank account?

MR. RICHTER: To securities as well as to a bank account.

MR. BOHN: I would like to ask a question. The committee has a letter from the State Bar commenting upon many items on the agenda and in connection with this particular item it reads as follows: "Item 4(C), Uniform Gifts to Minors Act was previously referred to our committees on Taxation and Administration of Justice. The report of the taxation committee, not yet considered by the board, says this in part: '(A) The act will produce for the most part no income, gift or a state tax consequences different from those produced by Civil Code Sections 1154 to 1164.

" '(B) That the essential changes the act will make as compared to those sections are (1) any adult, bank or trust company may be the custodian. (2) The gift may consist of money as well as securities. (3) There is very little protection of the minor against the invasion of principle as well as income by the custodian who in some cases would be the donor. (4) Making the statutes so broad as to include gifts other than securities practically nullifies the guardianship sections of the Probate Code.' " Now, as to those last two items particularly, would you like to comment? "Item 3, there is very little protection of the minor against invasion of principle as well as income by the custodian who in some cases would be the donor."

MR. RICHTER: It is true that we do not have the same protections that you might have in the guardianship by requiring the custodian to put up a bond, but you have to remember that what we are dealing with in the way this act would be used, the donor is selecting a person to act as the custodian. If he doesn't have an individual in mind, he can select a bank or trust company. But since he is making the gift of this property, he is also selecting the method and if you in your practice have a person come in and say "I want to give a small amount of money or a few securities for the benefit of my grandchild here." At the present time you have to tell him, "if you want to put it in the minor's name you can do that, but you will never be able to touch it, you will never be able to do anything until that minor becomes of age."

Otherwise your alternatives are to set up a trust or to put it in his name and put up a guardian. The guardianship proceeding has all the

disadvantages of all the formalities, the annual accounting, the bond and all that sort of thing. The trust may be cumbersome, it may not be worth the expense of going to drawing a trust, the property that is involved. We do have provisions in the act that the custodian is responsible and that he may be called upon to account at any time, either by the minor, if he is over 14, or by any member of the minor's family, you cannot initiate court proceedings against the custodian, but of course up until that point he is relatively free, but he is the person who has been selected by the donor of the gift as the person in whom he has confidence to administer this property for the minor.

MR. BOHN: Before asking any further questions on that, do you feel that your answer to Item No. 3 also answers No. 4?

MR. RICHTER: I think it pretty much does because it's true in a sense that this makes unnecessary guardianships, but that, I think, is a desirable effect of it. Guardianships would still be necessary where the act is not used for small gifts for the benefit of the minor, but it does permit gifts to be made for the benefit of the minor in a very reasonable and well worked out way and avoid all of the expense incident to guardianship which people would like to avoid in most cases.

SENATOR GRUNSKY: Mr. Richter, you say small gifts, is there a limitation in the act or are you just using that in a limited sense?

MR. RICHTER: I am using that because I believe that that is the way in which the act would normally be used, if a large amount of money were being given, certainly counsel is going to be consulted, you would look at this act, is this the thing you want Mr. Donor, do you want to use this provision or do you want some specific provisions for administration here, powers that you want to give to the trustee in that. And you would advise the donor then to either set up a trust to meet his peculiar needs or if this did satisfy it you might advise him to use this act.

MR. BOHN: In substance, then what you're doing here is to say that the protections and the formalities of the guardianship statutes are really unnecessary and also undesirable if the donor says they are?

MR. RICHTER: I think that is a fair summary of it, John. If the donor wants to avoid all of the expense incident to a guardianship proceeding I think he should have the right to be able to do so. All this does is provide a means by which it may be done. I may not have answered your question directly, I thought I did.

MR. BOHN: You answered my question I—

SENATOR GRUNSKY: There seems to be an assumption that if the donor thinks it's all right even though something gets fouled up later on, well that's all right because it was his choice, and I think that is probably what is troubling some of us is that when the donor makes the bequest the interest then belongs to the minor and the minor needs protection and that philosophical vague point that a donor gave it and therefore he can inadvisedly let it be touched or dissipated or something else it might just be fallacious thinking.

MR. RICHTER: Well, isn't that the thinking that pervades throughout our law. For example, when a donor can select any person, any individual that he desired to act as trustee of a trust he wants to set up, and he can dispense with the bond and he is putting his trust in that

person yet that person has exactly the same possibilities of absconding with the minor's funds as he would under this act.

SENATOR GRUNSKY: The only point is, you make it easy and most people are going to take the easy way out and if it's going to invite dissipation or poor handling and irresponsible handling of estates of minors, I think that's the problem * * * Would it solve the problem, Mr. Chairman? In your mind, what you're saying is, it has occurred to me and that's what I've been thinking about, would the requirement of a bond satisfy you?

SENATOR GRUNSKY: Well, I don't know, I am not sure what the answer to it is.

MR. BOHN: May I ask a question?

SENATOR GRUNSKY: Yes, go ahead.

MR. BOHN: Would you, for my benefit, because I happened to be late in getting in, would you again mention why you can't use a trust in this situation?

MR. RICHTER: You can use a trust, John, the only reason against using a trust is that if the amount involved is relatively small it might be too much expense and trouble to set up a trust, initially. If I want to give \$500 or \$1,000 worth of either money or stock for the benefit of my grandchild I don't want to go to the expense of paying a couple of hundred dollars or more to have a trust drafted to make that gift.

MR. BOHN: Basically it gets down to a question then of the cost of legal drafting of the trust instrument?

MR. RICHTER: That's right. Actually what you have here, in essence of course, it's not described that way, but here you have set up by law all of the provisions that would apply to a trust instead of calling him a custodian say he is a trustee and this law provides all of his powers and duties that you would spell out in a trust instrument if you created a trust.

MR. BOHN: The present law simply limits it to securities.

MR. RICHTER: That is correct.

MR. BOHN: And the purpose of this is to extend it to all other types of property or just money?

MR. RICHTER: Just money, this would not apply to real property, for example. No limit on the amount of money. Actually, under the present law I should point out this, although the initial gift is limited to securities, the custodian has the right under the present law to sell those securities then, of course, he has money and the power to reinvest that, so you are not really taking this very far when you say you are extending it to initial use of money because he already has the power to convert the securities into money and reinvest them.

MR. BOHN: Well, perhaps you have already answered my next question, which is this, is there a valid distinction between the gift of a specific security and a gift of money which in itself requires management and convert, and not in the sense of theft, but convert into some income producing device. For example, let us assume that the money is given to the custodian in this case \$10,000 or whatever the figure might be, and he certainly is going to do something with that money isn't he, he won't hold it intact. Now, let us say he determined that he wants to invest it in a house and then rent the house himself at a modest

rental instead of, let us assume that all prudent men would determine that that was a very poor investment, what are the protections there as far as the minor is concerned?

MR. RICHTER: Well, the custodian is, of course, limited to making prudent investments, using the prudent man rule as the rule which is the rule set up in the act as the guide for his investments and if he has not followed an investment policy which would correspond with the prudent man rule he would, of course, be liable to the minor and, of course, we have the provisions in the act in which the minor or any other member of his family may require the custodian to account at any time, not just when the minor becomes of age.

SENATOR GRUNSKY: The only thing that I am concerned about on this, gentlemen, is that you have a donor and in his lifetime there's a certain moral and intangible responsibility, but say that the donor dies and the youngster is five or six years of age and people change sometimes through illness or just perversity and all of a sudden an honest man begins to play the horses or something else and whoever brings it in, if there's a half a million dollars in cash and securities, whoever can call this to an accounting. The youngster being an infant may never even know of the existence of the fund and with the donor alive he knows if something goes wrong, he would know it, but when the donor is gone where have you anybody—in my mind, what a temptation to a weak character who has been designated as a custodian, to divert or embezzle these funds and I'm just wondering where there is any protection against that, all of these accountings are purely optional the way I see it, discretionary.

MR. RICHTER: That is correct, yes. It would take someone to institute the proceedings to compel the accounting.

SENATOR GRUNSKY: And the death of the donor removes anyone with sufficient knowledge or information under some conditions who could take the initiative. That's my concern, I just feel that just having a guardianship on file with the court then you've got somebody there who protects the interest of the minor.

MR. BOHN: Following through on Senator Grunsky's line of questioning, is it fair to state that the distinction between a gift under this act and a gift to a person as trustee is that in this act there is a complete lack of formality, is that a fair statement?

MR. RICHTER: There is a complete lack of formality only to the extent that you have to follow the required formality to register the gift, the gift thereupon becomes complete and the law supplies all of the powers and duties of the trustee rather than the trust instrument.

MR. BOHN: And you register the gift where?

MR. RICHTER: Well, in the case of securities you have to register the security in the name of the custodian as custodian under this act for the minor.

MR. BOHN: How about in the case of cash?

MR. RICHTER: In case of cash you have to set it up into an account in the bank or in a brokerage office, in the same way, the account to be set up in exactly that way.

SENATOR GRUNSKY: But the custodian has complete authority and jurisdiction over it and if he should embezzle it who would there ever be to challenge him on it or even catch it?

MR. RICHTER: Well, of course, any other member of the minor's family, the minor when he become of age——

SENATOR GRUNSKY: You still don't have anybody watching him.

MR. RICHTER: But you don't either in a trust, sir. Supposing you set up a trust in a situation, you don't have any more watch over that trustee than you do in this situation, to me it is exactly comparable.

SENATOR GRUNSKY: Well, you're answering my question.

SENATOR DOLWIG: May I interrupt there? Are you sure that's a correct statement, because as a trustee you have fiduciary relationships there that certain results can flow from that you don't have, say, where the man is merely a custodian?

MR. RICHTER: Well, I think you do because I view this thing, what this act does is spell out in detail all of the powers and duties of the trustee just exactly the way you might spell them in a different way in a trust investment.

SENATOR DOLWIG: Yes, but that's not exactly right either, because here you provide certain immunities, as I read it, let me ask you, referring to page 15, see what your interpretation of Section 7 is. Now, in the last sentence here you say "a successor's custodian." It says "a successor custodian can be an adult member of the minor's family, a guardian of a minor or a trust company." Would you interpret this last sentence to mean that even though a person is a guardian of the minor that if he becomes a successor custodian that he has only the obligations provided in this act and not those of a guardian? This is a matter of interpretation.

MR. RICHTER: I believe that is so. In other words, as to the specific property which is under the custodianship as distinguished from the guardianship, if he becomes a successor custodian he would have the rights and liabilities under this act rather than simply as guardian.

SENATOR DOLWIG: Well, then, Senator Grunsky's point is pretty well taken, isn't it?

MR. RICHTER: I am not sure I get the connection there.

SENATOR DOLWIG: Well, the point is, Senator Grunsky, as I understand it, has made the point that there are some added protections that the minor has by reason of the fact that a guardian has been appointed, why you have provisions for bonding and so forth, you have court control, you can go in and ask for accounting and all those things. And not only that, but if the guardian does not carry out the guardianship properly the court has police jurisdiction of him. Now, what bothers me here is I am going even a step farther than Senator Grunsky and here you are providing that even though a man is a guardian of a minor and then, say you have a bank as a custodian, then, for some reason, the bank takes the securities or whatever it is that they have custody of and turns it over to a guardian, and the guardian has only the responsibilities as a custodian under this act and not as a guardian.

MR. RICHTER: Well, those responsibilities are not substantially different from those of a guardian. He would have more power in that he could use the prudent man rule in investments, which a guardian, of course, cannot do, could not make any investment without authority

of court. But as far as his responsibilities and liabilities for the property entrusted to him, I don't think they are any different from those of the guardian other than as to that power of investment.

SENATOR GRUNSKY: I think Mr. Richter also made the distinction that in just an ordinary trust where you just set up a bank as trustee there is no necessary court proceeding or approval of that at all, is there?

SENATOR DOLWIG: No, but even a bank as a trustee and by reason of the trusteeship you have a fiduciary relationship and certain responsibilities flow from it as I understand. Those same responsibilities are not inherent or present under this law as far as the custodian is concerned. There is a distinction there as far as protection to the minor is concerned.

MR. RICHTER: Well, I think as far as his fiduciary liabilities he would have exactly as much, he would have broader powers, for example, to invest. He would also have the power to pay over to the minor for expenditure by him or to expend for the minor's benefit so much of or all of the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor. These things he could not do under a guardianship, for example, without a court order. But this is a broader thing, there is no question about it, you don't have, under this, the same protections you would have under a guardianship, it's more akin in that respect to the setting up of the trust for the benefit of the minor where, of course, you don't have the court supervision of it on a private trust that you would have under a guardianship and to the extent that this act provides something; what it really provides is something in lieu of the trouble and expense of going to setting up a trust particularly where small gifts are involved.

SENATOR BUSCH: But the thing is you have the same liabilities upon the trustee or for the custodians as an instrument that you would draw up for a trust, isn't that right?

MR. RICHTER: I think so, sir.

SENATOR GRUNSKY: Well, the way I see it, you keep using the word "small" and if all we think about are small estates I would agree with you, maybe there should be a monetary limitation of some kind, because when you make, I can see the expense and the trouble, which you use that expression and properly so, it's almost out of order in line with the amount of money involved, but when you start getting loose in making it easy and convenient, you are inviting the unscrupulous and those with weak characters where other people's money is concerned, you are inviting disaster for some minor's estate.

SENATOR DOLWIG: Well, I think too, Senator Grunsky, if you're talking about small amounts, but let's say you have a donor who is making a practice of donating \$3,000 a year over a 10-year period, there's \$30,000; you're not talking about small amounts of money.

SENATOR GRUNSKY: Philosophically you are saying if the donor wants to do it, let him do it and if something happens to the estate, well, he did it with his eyes open and it was his money in the first place.

SENATOR BUSCH: Well, isn't that true in an ordinary trust where you set up a private trust?

SENATOR GRUNSKY: Well, that is Mr. Richter's point, that if you can do it in a private trust, why can't you do it with this and on that theory, I am inclined to go along except when you start to make things too easy and too convenient, you get into a loose, lack situation where I think you may be inviting disaster by making it more loose than we now have it under the trust arrangement.

SENATOR CHRISTENSEN: This, Mr. Richter, could be a testamentary gift to minors as well as by inter vivos gifts, could it not? In other words, if the effective date of the transfer would be on the donor's death, is there any reason that you know of why the specific legacies would not be given to a designated individual to hold them, hold the gift.

MR. RICHTER: I have never heard of that in connection with this, Senator Christensen. I am trying to find the specific language that might apply to that. I don't believe it is meant to be set up for testamentary gifts, it contemplates an existing donor but perhaps you are right that it could be used. I just can't find offhand the specific language that might answer that question.

SENATOR CHRISTENSEN: Well, assuming that it was, would the gift fail if there was no custodian in effect at the date of distribution, in your opinion?

MR. RICHTER: I assume it would and then the distribution could only be made to a regular court appointed guardian if there was no custodian.

SENATOR CHRISTENSEN: In a case of the trust of that nature, of course, it would not—(noisy) I think they call it the cy pres doctrine.

MR. RICHTER: To appoint a new trustee.

SENATOR CHRISTENSEN: Yes, also under this provision the custodian can in effect relieve himself once the gift is completed, say an inter vivos gift, by just walking off the picture and designating a successor.

MR. RICHTER: Well, he has to complete the designation by having any securities or accounts registered in the name of the successor properly according to the act.

SENATOR CHRISTENSEN: There is no provision in here for consent by anyone, either the donor, if he's still alive, or a court or anything else.

MR. RICHTER: That is correct. The original custodian appointed by the donor has the right to appoint a successor, although that successor must be an adult member of the minor's family or a bank or trust company or the guardian of the minor's estate. He doesn't have the right to go out and pick anybody out of the air to make him . . .

SENATOR BUSCH: One thing here that may answer your question whether or not this could be done. What does the language on page 9 mean, "Manner of Making Gifts." It says "An adult person may during his lifetime."

MR. RICHTER: That, I think, is the answer to it, sir.

SENATOR GRUNSKY: Yes, that is the answer to that apparently.

SENATOR CHRISTENSEN: I was thinking—can I carry this one step further?

SENATOR GRUNSKY: Yes, go ahead, Carl.

SENATOR CHRISTENSEN: Isn't it true that one of the main reasons for avoiding the difficulty of the guardianship is to have the responsibility placed on someone selected by the donor? Apparently once that has been done there's no responsibility on the part of the donee of the gift. (noisy) or the person who is to administer this legally opposed trust to carry out these funds and he could just walk out of the picture and designate a successor; provided it be a member of the family.

MR. RICHTER: Provided it be within this limited group.

SENATOR CHRISTENSEN: Maybe that is the main reason that the donor has it, to see that it would not get back into a certain member of the family of the beneficiary.

MR. RICHTER: Well, that is a possibility—

SENATOR CHRISTENSEN: Well, in the event the custodian dies, can't then the member of the beneficiary's family become the successor custodian?

MR. RICHTER: Become a successor custodian then on a petition to the court only.

SENATOR CHRISTENSEN: The donor has nothing to do with it, he can't, in fact, he is not a party to the proceedings.

MR. RICHTER: That is true. Of course, that would be true also if he had made any irrevocable gift in trust or to the minor which is now in the possession of the guardian.

SENATOR GRUNSKY: Well, to move along on this, John, do you construe the State Bar's comments that they would oppose this or are they simply raising questions?

MR. BOHN: What they say is that the board hasn't yet considered the report because of its very heavy workload and the committee has not yet made its final report. My assumption is, from the language of this, that the State Bar is going to oppose this bill, although they don't say that. They do say there is very little protection of the minor; then they say making the statute so broad nullifies the guardianship sections of the Probate Code. I would simply guess that that would imply that they disapproved of it.

SENATOR GRUNSKY: Well, under those circumstances, I guess we better just let it take its course. What is the thinking of the rest of you? All right, we will just show it in our report, with the comments and arguments for and the points raised against as reflected here and then when it comes up you can give us the benefit of it with your comments as counsel for the Standing Committee so that this hearing will not be wasted, what we've gained here will be paraphrased and given to the Standing Committee when the matter comes up at that time. Next item.

MR. RICHTER: The next item on our program is the Uniform Facsimile Signatures of Public Officials Act. The purpose of this act is simply to provide a legal method by which some of the voluminous bond issues and other public issuances of that type, including checks, may be signed by facsimile signatures and not require the manual signature of every officer who is required by law to sign. This was drafted, incidentally, the chairman of our California commission, Martin Dinkelspiel, was the chairman of the committee of the national conference

which drafted this act, so to give you the background I would like to read very briefly a paragraph from a letter of his, "The Uniform Facsimile Signatures of Public Officials Act was drafted by the conference in response to a request from three sources, the Council of State Governments, through the National Association of State Treasurers; the Investment Bankers Association, which had prepared a model act and the section on municipal law of the American Bar Association. During the course of its drafting it was submitted through the Council of State Governments to the attorney generals of the various states, many of whom had suggestions and comments which were incorporated in the final draft.

"Also, through the section on municipal law of the American Bar Association with the same result and through it to the Investment Bankers Association likewise with the same result. There definitely is a very substantial demand for the act. I received replies from approximately 30 of the state attorney generals."

The act itself is rather short. The first section deals with definitions, it defines first a public security as meaning a bond, note, certificate of indebtedness or other obligation for the payment of money issued by this state or any of its departments, agencies or other instrumentalities or by any of its political subdivisions. The instrument of payment means a check, draft, warrant or order for the payment, delivery, or transfer of funds. The authorized officer means any official of the state or any of its departments, agencies or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted. A facsimile signature means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer.

Section 2 of the act provides that any authorized officer may after filing with the Secretary of State his manual signature, certified by him under oath, execute or cause to be executed with a facsimile signature in lieu of his manual signature (a) any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed and (b) any instrument of payment. Upon compliance with this act by the authorized officer his facsimile signature has the same legal effect as his manual signature. Going back to subdivision (a) the reason for the requirement that there at least be one manually subscribed signature on each public security as a bond, is that the investment bankers just will not take anything less, they say we've got to have our bonds with at least one manual signature on them. You can use your facsimile signature for the other signature on them but one of them at least has to be a manual signature. So in deference to their insistence that there be such a provision or they would not accept bonds, it is drafted that way.

This, of course, is not true of the instruments of payment which would be covered by the act, they can be signed completely by the facsimile signature. Section 3 of the act is the use of a facsimile seal. When the seal of any of the public bodies is required the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. Facsimile seal has the same legal effect as the impression of the seal. Section 4 deals with violations. Any person

who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of the state or any of its departments and so forth, is guilty of felony. The other is the usual provisions of the act. It is a very short act; we think it meets a substantial need. It has been distributed; we have not had any comments back as yet from any of our own state people to whom Mr. Dinkelspiel has submitted the act, but we expect that they should approve it; it has been approved I think by their national associations.

SENATOR GRUNSKY: Do any states presently have this in effect?

MR. RICHTER: It has just been approved at the August conference so it is just being submitted for the first time to the states—

SENATOR BUSCH: This refers to the states' political subdivisions, that wouldn't apply to the counties would it?

MR. RICHTER: You say it would apply—

SENATOR BUSCH: It would not apply to counties then would it? A county is a political subdivision, but it does not belong to the state. I was wondering if you mean to make this apply to counties and if you do I think the proper place to have a facsimile signature on file would be in the county clerk's office, rather than with the Secretary of State.

MR. RICHTER: I am sure it was intended to apply to counties, Senator Busch, as well as to these other political subdivisions which have reason to use the—

SENATOR BUSCH: Well, I think possibly the facsimile signature should be on file with the county clerk's office rather than with the Secretary of State in those instances.

MR. RICHTER: Wouldn't it be better perhaps to have the central filing of all facsimile signatures in one place?

SENATOR BUSCH: Well, maybe you have it in both. For instance, a bank in a smaller county instead of having to communicate with the Secretary of State could go to the county clerk's office and determine whether or not the signature was a genuine facsimile.

SENATOR GRUNSKY: It should be in each place, if it is the county.

SENATOR BUSCH: I think so, too.

SENATOR GRUNSKY: That is an amendment then probably that should be considered.

MR. RICHTER: I am sure we will be very glad to consider that amendment. I don't think that would affect the basic uniformity of the act.

SENATOR GRUNSKY: Well, certainly not the intent. As a matter of fact it is just a step toward further security. John, do you have any comment?

MR. BOHN: Just one further question along the same line. Would your suggestion be the same if it were a city security or a district security?

SENATOR GRUNSKY: Well, at the county seat for convenience of verification. Well, this is one, as far as I can see, there is no controversy on this just what private industry is doing and corporations and others without any risk, I do not know of any . . . (noise). Has anybody ever heard where they have trouble with these facsimile signatures?

SENATOR DOLWIG: Well, you put in a pretty strong penalty there; that will discourage them.

SENATOR GRUNSKY: Under those conditions this may be one of those which we can take with our approval and have the report show it so that when it comes up for hearing we can take the recommendation of this subcommittee in lieu of a hearing at the general session. All right, with the usual motion then that this has a favorable recommendation of the subcommittee for acceptance of that recommendation without formal hearing.

MR. BOHN: With the amendments as suggested?

SENATOR GRUNSKY: Yes, with the suggested amendments. All in favor signify by saying "Aye"—contrary minded, motion is carried. All right, Mr. Richter, do we have another item?

MR. RICHTER: Well, I am happy to be able to tell you that the next item may go off calendar.

SENATOR GRUNSKY: Which one was that?

MR. RICHTER: The amendments to the Uniform Federal Tax Lien Registration Act. We put that on in error; we find that they have not finally been approved by the National Conference, so they will not come up this year. I am sure you will be glad to hear that.

MR. BOHN: May I ask one question, Mr. Richter? Is that one of those bills that you intend to introduce and ask to be referred to an interim committee just to get the machinery in motion for a later time?

MR. RICHTER: We will probably introduce it at the following session, John, but since it will not be in final form for let's say, a year, would it be advisable to introduce it in this form now or bring it up as soon as it is finally put in final form?

MR. BOHN: Perhaps that is a question that should be asked the chairman. I am wondering if—

SENATOR GRUNSKY: I have no objection to incorporating these things in the interim committee report, but there is no point in attempting to have a hearing on it at this time although the general public and readers of our report might find it convenient to have it readily available. Though again, if it is not a final draft, what purpose does it serve?

MR. BOHN: The only thought that occurred to me was that if—whether it is put in the report or not if in fact this particular draft or any draft is introduced at the next session then people will communicate with the committee expressing their interest and so forth in the subject matter and we will then have a mailing list next year when it is perhaps ready for discussion and we will have a mailing list of people who have expressed an interest that can be notified to attend the interim hearing, that is the only question that I have.

SENATOR GRUNSKY: I understand. In other words, what you are saying is that though it will not be ready for hearing and passage in the '59 session that a bill should be introduced and could then be referred to the interim committee. Oh, that is a very good suggestion, but I do not think that need be a part of our present report, that is just advice and suggestion to the commission.

MR. RICHTER: I would be very glad to adopt that.

SENATOR GRUNSKY: All right, next?

MR. RICHTER: The next item on our program are the amendments to the Reciprocal Enforcement of Support Act. Just preliminarily I think some of you gentlemen may have more familiarity with it than others, those who have been district attorneys, at least in recent years, will know something of this act. The act has been amended a couple of times; it was drafted originally around 1950, I believe, to take care of this problem of the absconding father who went over a state line and then the only available proceedings there were interstate were criminal proceedings to attempt to get anything from him for the support of his abandoned children.

I don't have enough familiarity with this to go into the details on these amendments so I have asked Mr. Harold Pressman, who is the deputy district attorney in charge of the Failure to Provide Division of the Los Angeles District Attorney's office to go over these amendments with us here. He has some little objections himself to some of these amendments and since these are simply amendments to the Uniform Act, we would like the benefit of this committee's comments on the amendments to see which ones he may object to or should be dropped out of the bill. Mr. Pressman.

MR. PRESSMAN: Thank you, gentlemen.

SENATOR DOLWIG: Mr. Chairman, may I ask a question?

SENATOR GRUNSKY: Yes, Senator Dolwig.

SENATOR DOLWIG: I am just wondering whether we are not going to spend a lot of time here and if perhaps inconclusively. . . . This is evidently of considerable interest throughout the State. I am sure that every district attorney's office in the State is going to be interested in this and I was just wondering, Mr. Richter, have they had these amendments, has this gone out generally throughout the State, has notice been given and so forth?

MR. RICHTER: I believe that they have been submitted to the District Attorneys' Association but not individually to all of the district attorneys' offices. I think Mr. Pressman may know more about that.

SENATOR DOLWIG: Oh, all right.

MR. PRESSMAN: Yes, gentlemen, I believe that they have been sent to the district attorneys of each county. With respect to the comments that I have to make, I will use the term "we" and when I say "we" I mean not only my own views but the views of District Attorney McKesson, who was a juvenile court judge for many years here and who was a deputy county counsel for many years here; the views of Judge Doyle who has heard many of our 15,000 cases here; Judge Thaft who will succeed Judge Doyle next year in that same department, and Assistant District Attorney Alfred DelCarlo of San Francisco who handles there the same type of cases that I do here, that would be exclusively the reciprocal support cases.

At the time that these proposed amendments were prepared they were sent to the different district attorneys and comments have been made directly to the council of state governments regarding them. To give you just a brief idea of how large this subject might be here and without giving you statistics I simply want to say that in 1953 we had

here on our courts calendar 1,846 cases, reciprocal support cases, in 1958 we had 4,500 such cases and from each from 1953 to 1958 they progressively increased.

SENATOR BUSCH: That is in Los Angeles County?

MR. PRESSMAN: That is in Los Angeles County, yes sir. We have now exceeded case No. 15,000, we started with case No. 1. We definitely handle more cases than any county, in Los Angeles, perhaps more than many combined and I believe that we handle more than New York, which otherwise would be first. So our experience comes from that of 15,000 cases. I have reviewed these proposed amendments that have been suggested here by the American Bar Association. I'm familiar with the arguments on both sides on many of these. I've just attended a conference at Miami at which the representatives of the states appeared in connection with reciprocal support matters exclusively. At the meeting with Mr. Brocklebank who is a member of Mr. Richter's committee, several of these things which we oppose are not concurred in by Mr. Brocklebank and he knows our position and I have indicated to him that we would oppose certain of those things and he understands our reasons for it.

And I would like, if I may, to take each one of these proposed sections, I believe you have before you a mimeographed list of them, and some of them are important, they are all important but some of the last ones are the most important so we will take them in the order of their importance. I estimate that it will take about 45 minutes to cover all of them, or that is the length of time it took for Mr. Richter and I to cover them in his office the other day.

Now with respect to Section 2 of the act, that is the section that has to do with definitions. I note that in Section 2 of the definition Prosecuting Official is not included among those definitions. It should be inserted in our 1653 of the Code of Civil Procedure, because the Prosecuting Official is referred to throughout the act and he is given certain duties and certain responsibilities. The following definition is proposed: "Prosecuting Official means the district attorney of a county in which the obligor is alleged to be present, the obligor being the defendant." This suggested definition amends our present 1653, subdivision 9, by eliminating city attorney or city prosecutor from the definition.

The reason that those officials were originally in there was because our Section 1552.4 of the Welfare and Institutions Code states that when aid is given to a child that the district attorney should be notified. We requested that to be amended to read "City Attorney or City Prosecutor" because those were the people in some jurisdictions who have the responsibility, but under the Reciprocal Support Act the responsibility as public official or prosecuting official is only the district attorney in each of the counties. These matters are not handled by city prosecutors nor city attorneys in any of the counties nor in any of the cities, and for that reason we feel that the definition should mean the district attorney of any county and I believe that there is no argument as to that and that all city attorneys and all city prosecutors would be in favor of that.

SENATOR DOLWIG: Mr. Chairman, may we act on these individually or—

SENATOR GRUNSKY: Well now that is—you raised that original point and I think it is well taken as to what we want to try to do here today with regard to this. I mean there is no question that this is one of the most important acts on our statute books financially insofar as the counties, welfare and the rest are concerned and it's one which, as far as I'm concerned, and Senator Regan isn't here for the moment, but I imagine that we will all agree that this is one that we should give a full hearing to in Sacramento and for that reason I am wondering how much would be gained by our hearing it at this time in the absence of a substantial representation of all interested segments of the State who would be here and hear the comments and give us the benefit of either their support or disagreement with some of these situations.

SENATOR DOLWIG: Well, Mr. Chairman, may I make this suggestion? Perhaps to save some time in the main committee during the session if we took some action on each one of these amendments individually — either approve or disapprove them then we could get it in the record——

SENATOR GRUNSKY: Well, that would help. All right then, let us do that because on things we do not want to do is to be duplicating in other words, listen to it now, take no action and have to listen to it again to take action and that means we've wasted at least what time we have spent here.

SENATOR DOLWIG: I will move the adoption of the first amendment.

SENATOR GRUNSKY: All right, then we will proceed in that manner. All in favor of the adoption of the first amendment signify by saying "aye" — contrary minded. Motion is carried.

MR. PRESSMAN: Gentlemen, Section 6 of the proposed act on page 4 of the mimeographed portion. Now, Section 6, gentlemen, of the Uniform Act is completely revised and expanded. The old section, that was 1660 and 1661 C.C.P.——

SENATOR DOLWIG: Pardon me, may I ask a question? This is a little confusing. Is this act going to repeal existing sections in the Welfare Code and also the Penal Code?

MR. PRESSMAN: No sir, it will not change any of the sections in the Penal Code nor in the Welfare Code. There is one——

SENATOR DOLWIG: Well, pardon me, as you always mention — you are referring back to some other sections when you are talking about——

MR. PRESSMAN: I am referring to two things sir, I am referring when I say "Section 6" I am speaking of the uniform act which is proposed here. When I am speaking of "other sections" they are sections in the Code of Civil Procedure which are now the sections on our reciprocal support act and those are the only two acts that I am referring to. So when I say a proposed act I am referring to that which is proposed by the uniform commissioners and they are numbered in accordance with the uniform act. Prior code sections do not follow that numbering but for Section 6 of the uniform act, we have 1660 of our Code of Civil Procedure. Section 6 of the uniform act is completely revised and expanded, the old Section 6, that is 1660 and 1661 C.C.P.,

relieve the defendant of extradition if he complies with a court support order that was made in this jurisdiction.

The new section provides that the Governor may delay a demand on the governor of any other state for the surrender of a person charged with nonsupport if no civil action for support has been brought under the act and he may refuse to honor a demand if the person demanded is complying with the court order obtained in this act or has prevailed in an action for support under the act. We approve this change which would reconcile the California case of *In re Floyd* reported in 42 Cal. 379, a Supreme Court case, would reconcile that with the Florida Supreme Court entitled *Jackson vs. Hall* reported in 97 Southern Second Series page 1, and it would also make uniform the statutes of Arizona, Georgia and several other states which now permit a defendant to defeat an extradition by initiating a reciprocal procedure contrary to the desires of the initiating state.

And the problem prior to its being decided by our Supreme Court of California was simply this, that a man fled from the State of Ohio to California, the State of Ohio wanted to take him back to Ohio for the crime of failure to provide. This defendant, and now speaking of the Floyd case, this defendant, over the objection of the State of Ohio, initiated a proceeding here himself to be relieved of extradition under the reciprocal support act. We took the position, and I say "we" I mean our office, because it happened to be case that was in this county, we took the position that the election of whether or not this man should be taken back to the State of Ohio should be the election of the authorities of that state and not the election of the defendant, that the defendant has no right as such to make an election as to whether or not he should be charged with a crime.

SENATOR GRUNSKY: Would you clarify that? What is the proceeding in California that he instituted?

MR. PRESSMAN: Under the present proceedings in California a man may be taken back to the State of Ohio if that state wants him and that has been the position of our Supreme Court in the Floyd case.

SENATOR GRUNSKY: I understand that. What is this proceeding he can start in California?

MR. PRESSMAN: Under this suggested proceeding the Governor—Well pardon me, Senator Grunsky—there was no—

SENATOR DOLWIG: Maybe you are going to lose me and perhaps some of the rest of us. Number one is the obligation to support, the order was in California, right?

MR. PRESSMAN: Sir, there was no order that was ever made in California, the other state wanted that man back and this man took it upon himself to initiate a proceeding to which we did not concur, but he initiated it.

SENATOR GRUNSKY: Well, I am just asking what is that proceeding he initiated?

MR. PRESSMAN: He initiated a proceeding under the reciprocal support act which we said and our Supreme Court said was not authorized.

SENATOR GRUNSKY: Now you say a proceeding under the act, what relief was he asking?

MR. PRESSMAN: It was asking that our court here make an order allowing him to support the children in the other state and relieving him of extradition, despite the fact that the other state wanted him.

SENATOR DOLWIG: Wait a minute, as a practical matter, as long as he was giving the support, what was wrong with this if he was willing to support?

MR. PRESSMAN: We took the position that the determination of whether a man should be taken back there for a crime should rest within the other state's discretion and not for the defendant's. It might have been that they were looking for him for 10 years.

SENATOR DOLWIG: What, for nonsupport?

MR. PRESSMAN: For that and other charges. Well, let us assume nonsupport even or he might have fled from jurisdiction to jurisdiction.

SENATOR DOLWIG: Well, then, you have another element besides the obligation to support here, right?

MR. PRESSMAN: Well, the element of the obligation to support and the element of whether or not the other state wants to take a man back for commission of a crime there, the crime of failure to provide. But Senator, our Supreme Court decided that the man could not make that decision himself. The Florida Supreme Court in the Carpenter case there in Florida, *Jackson vs. Hall*, I guess I should say in Florida, decided exactly contrary to our Supreme Court. Now this proposed amendment will take care of that situation.

SENATOR BUSCH: Let me ask a question on that point now, does it now, because you have in here that if the district attorney can satisfy the Governor that such a proceeding would be of no benefit, then the Governor can order the extradition. Now in Florida then that decision that they passed down there would still be the same regardless of the fact, I take it, that the district attorney might recommend to the Governor, and the Governor might accept the recommendation that no proceedings should be brought. How would you get around that decision in Florida by this language here?

MR. PRESSMAN: Well, of course, in Florida itself we had no problem because in Florida they are allowed now under their case in Florida to initiate a proceeding themselves. Now under this act the Governor would have to decide, the Governor of Florida would have to decide whether or not the proceeding should be stayed and they would be stayed sir, pending the initiation of a reciprocal support complaint, a civil complaint by the state that wants the man. In other words, it gives him a 60-day stay within which period the initiating state might start the proceeding.

SENATOR BUSCH: Well, if the district attorney of this state, before they want him in Florida, the district attorney of this state makes a recommendation to the Governor of the State of California that these proceedings would be of no avail, wouldn't benefit anybody, the Governor can adopt that recommendation then and order him extradited.

MR. PRESSMAN: That is correct.

SENATOR BUSCH: Florida, as I understand it has passed a law that would hold that that could not be done, is that right? If the defendant wanted to have this hearing in California?

MR. PRESSMAN: Let us assume, sir, that the Governor of California took the position that he wants to abide by the recommendation of the district attorney, and if the Governor of Florida wanted the man back then there would be a matter of discretion between the Governor of California as a matter of decision which would reside with the Governor of California, he could or need not surrender the man. We use the word "may" instead of "shall" so he still may if he so desires keep the man here or he may surrender him as he sees fit. But that would have to be within the Governor's conscience and not ours. We would make a recommendation based upon our findings here.

For example, the man might have had a criminal record here with respect to failure to provide, he might have made a thousand promises which he has not kept and he might have indicated that he has no intention of supporting those children. In such an instance we would recommend to our Governor that the reciprocal act would serve no useful purpose and it would be our recommendation that there is no point in asking the governor of the other state to follow the reciprocal action, but we would have to depend on the Governor's sound judgment in that case but at least we would leave it to the Governor rather than to the defendant.

SENATOR BUSCH: If they had a similar law in Florida then and California wanted to get the defendant and bring him back here and the district attorney made a recommendation back there in Florida that the hearing would be of no benefit under the ruling of that decision in Florida the defendant would still have the right to go to court, wouldn't he?

MR. PRESSMAN: That is right, sir. We would be stuck with that decision but after all we have to rely on the sound discretion of the Governor. We would be stuck with that, that is right, sir.

SENATOR GRUNSKY: Any other questions on this item?

SENATOR DOLWIG: This matter of extradition here is part of the broad problem of extradition and not necessarily involved in the support cases.

MR. PRESSMAN: Sir, this is exclusively with respect to support cases. It has nothing to do with any other criminal cases for which an extradition is used. This would have no effect on any other criminal cases.

SENATOR COOMBS: How about the cost end of it, in support cases?

MR. PRESSMAN: Sir, we have a recommendation for the matter of costs in another section. We are recommending that there be no costs chargeable to the woman plaintiff but that the court may in its discretion fix costs and charges as against the defendant if the court feels that money is available or that it should be made. We do have a section on costs and fees, Senator, and that is Section 6. We are in favor of Section 6 being passed as it is recommended in this Uniform Act.

SENATOR DOLWIG: Without any amendments?

MR. PRESSMAN: Yes sir, Section 6 is all right as far as we are concerned.

MR. BOHN: I have had several questions in the back of my mind about this particular act ever since it was passed and perhaps if I could take a few minutes of your time in reference to this particular

case it might clarify the situation. As I understand these support cases, the theory is that the crime is committed where the woman is not being supported, is that correct?

MR. PRESSMAN: That is so sir, we have a criminal Section 777a of the Penal Code which indicates that the jurisdiction in failure to provide cases is the jurisdiction where the child is being cared for or where the defendant is apprehended. So, in local cases we have no problem.

MR. BOHN: I understand that, I am talking now about when you are dealing with the problem of two states and people are traveling back and forth between these two states. Now let us assume this situation, suppose a husband and his wife and family were residing in California and the wife, for reasons we will say are not proper, takes off and goes back to Ohio and establishes a residence there with the children. Now the husband simply refuses to support them under those circumstances. May that wife then go into court in Ohio and start one of these proceedings?

MR. PRESSMAN: Yes sir, she may start proceedings but our court here, which would be hearing the case, would in its sound discretion refuse to order support if the woman had taken the children in violation of a court order.

MR. BOHN: Suppose there was not a court order. Suppose this wife says "I don't like it here, I am going home where we originally came from" she goes back there with the children and establishes a bona fide residence on her own, then she files a criminal complaint against the husband in Ohio and the Ohio people ask that the husband be extradited to Ohio. Now as I understand it under this amendment you are proposing, he never does get a day in court in California, he goes to your office and you decide that you are going to make a recommendation to the Governor that the man go back. If the Governor then decides, he goes back. Is that correct?

MR. PRESSMAN: No sir, under the suppositious facts that you have given us that the woman has gone to Ohio and taken the child, our recommendation would be that there be no extradition, that the woman file an action under the reciprocal act so that our court here could determine whether or not there should be support, there our position would be that there would be no extradition.

MR. BOHN: Well I appreciate that in big offices such as yours but I think we also have to bear this in mind that this can be used against people of very substantial means as well as against people who are on welfare and who somebody is trying to collect from. It has always concerned me that a husband could in a state where he never committed a crime, and perhaps never had been, be hauled back there without having been in court and now it appears that you are advocating the next step which means that he can't get into court at all, he must go back and defend himself there.

MR. PRESSMAN: No sir, I probably did not make myself clear. This gives him protection actually. It protects him from being taken back to the other state although they might demand it in the other states. Under the suppositious case that you have propounded here the defendant would be entitled to have a reciprocal support case filed, a

civil case, whereas, were it not for this amendment the man would have no say, the other state could take him back simply if they wanted to take him back, so this new amendment, this Section 6 protects the man from being taken to a state to which he has never been.

SENATOR DOLWIG: Let's find out what section that is in.

MR. PRESSMAN: We are talking about Section 6.

SENATOR DOLWIG: Yes, where does it say that?

MR. PRESSMAN: It says in effect that no man shall be taken back to any other state or taken to any other——

SENATOR GRUNSKY: Where is the language so that we can read it?

MR. PRESSMAN: Well, let's read the language B, subdivision B, line 8. "When under this or substantially similar act, a demand is made upon the Governor of this State by the Governor of another state for the surrender of a person charged in the other state with the crime of failing to support, the Governor may call upon the prosecuting attorney to investigate or assist in investigating the demand and to report to him whether any action for support has been brought under this act or would be effective."

Now we are talking about a civil action, not a criminal action, brought or effective. "If an action for support would be effective and no action has been brought the Governor may delay honoring the demand," that is, for the extradition, "for a reasonable time to permit prosecution for support. If the action for support has been brought and the person demanded has prevailed in the action, the Governor may decline to honor that demand," and that would be the case, sir, that you have propounded to me.

MR. BOHN: Now I am not understanding you. I thought you said earlier that under the present law the defendant can make this decision himself by bringing an action.

MR. PRESSMAN: No sir, that is in Florida, but not in California. Our California court has said that he could not.

MR. BOHN: Suppose they were living in Florida? Would the defendant be able to — no, suppose we had in California the Florida law——

SENATOR DOLWIG: Let's stay with the Ohio situation, that is the one we are talking about, if we may. The woman is in Ohio, the man is in California, can we stay on that one until we get it straightened out?

MR. PRESSMAN: Under that situation, Ohio could take the man back if they wanted him, period.

SENATOR DOLWIG: Under the present law?

MR. PRESSMAN: Under the present law.

SENATOR DOLWIG: All right, now what would happen under Section 6?

MR. PRESSMAN: Under Section 6 before that man can be taken back to Ohio it would be necessary for our Governor to request us, the district attorney's office, to look into the matter to see whether or not a civil reciprocal case would be effective, and if the Governor feels that it would be, then he may refuse to surrender the man to Ohio until such a time as Ohio commences the civil proceeding and they have 60 days within which to do so.

SENATOR DOLWIG: Pardon me, what do you mean now when you say "reciprocal"?

MR. PRESSMAN: By reciprocal proceeding we mean a civil action under the reciprocal support act initiated in California.

MR. PRESSMAN: Initiated in California. No sir, initiated in Ohio.

SENATOR DOLWIG: What if they say "Well, we are not interested."

MR. PRESSMAN: Then our Governor has the right to deny the extradition under the act.

SENATOR GRUNSKY: Well, it is obvious that it is better protection than the existing law under the California case and even though it may not go as far as some of us would like it, it certainly is in the direction which is indicated we all want.

SENATOR DOLWIG: Well, that's what bothered me, what if the Ohio people do not take any action where is the guy now, how is he—

MR. PRESSMAN: Then he is right here in California and the Governor may then under the statute refuse to surrender him and deny extradition.

SENATOR DOLWIG: Would that be the end of the matter?

MR. PRESSMAN: That would be the end of the matter as far as we are concerned and they, as a practical matter then, would be compelled to file a civil case to have it determined, but they cannot take him back.

SENATOR GRUNSKY: This is a step in the right direction, I think.

MR. BOHN: I am just wondering if perhaps the California court was wrong in making that decision and that is why I am asking about Florida. Now suppose we had in California the Florida rule, and in that instance the man could bring the action here, is that correct?

MR. PRESSMAN: That is correct.

MR. BOHN: So what we're dealing with here is, assuming for the sake of discussion, I am only trying to understand it, assuming for the sake of discussion that this committee wanted to liberalize it more by adopting the Florida rule by statute then they would by the amendments you are proposing here, is that correct?

MR. PRESSMAN: That is correct, but the Florida rule, we feel, is too liberal.

MR. BOHN: Well, that's a policy question.

SENATOR GRUNSKY: And also this will presumably be uniform in numerous states whereas if we don't, we are getting out of line with the other states.

MR. PRESSMAN: And the decision is not up to the defendant, the decision is up to the Governor rather than the defendant.

SENATOR GRUNSKY: All right, do we all understand this one? Senator Busch isn't here, but he said he likes it, how about the rest, the motion to adopt this one? All in favor of the motion approving this amendment signify by saying "Aye"—contrary minded, no. Gentlemen, we will be back at work at 11.30.

(Recess)

SENATOR DOLWIG: Mr. Chairman, I have one other question. Would you consider the advisability of changing "will" to "shall"

in regard to saying that the Governor shall request the prosecuting attorney to make the investigation.

SENATOR GRUNSKY: Instead of "may"?

SENATOR DOLWIG: Instead of "may".

SENATOR GRUNSKY: Where is that?

SENATOR DOLWIG: Line 12.

SENATOR GRUNSKY: Well, that is for the further protection of the California resident husbands. All right, well we all go for that.

SENATOR ARNOLD: There is a question in my mind as to whether there may not be cases where discretion would be advisable in the hands of the Governor in these cases.

Supposing you have a fellow who has jumped from state to state for the express purpose of avoiding any support and then you come to California in the case that we are discussing now and you find that a Governor knows all of this; all this serves would be to delay his action in being able to order extradition at once when he was convinced that that is the only remedy that is justified.

SENATOR BUSCH: And that happens in an awful lot of these cases, these fellows who don't want to support their families will go from one state to another just to avoid that.

SENATOR GRUNSKY: Well, let's find out, what is your opinion on it?

MR. RICHTER: My recollection of the discussion of this at the national conference was that the reason it was left in the discretion of the Governor was just to take care of this kind of a situation. We think that the Governor will act upon the facts, if there is no reason why there shouldn't be a proceeding instituted here, he will go ahead and call upon the district attorney to investigate and make his recommendation on the matter.

SENATOR DOLWIG: Well that persuades me except that I am still concerned about the protection of the man who is in California to make sure that this information gets to the Governor so that that action can be taken. That is the only thing that bothers me, perhaps "shall" may be a little too drastic here.

MR. PRESSMAN: May I suggest that the word "shall" be used in the first portion of it which would require the Governor to have the district attorney investigate and the last portion of it remain "may" so that he may delay and he may decline to honor the demand but he shall have the district attorney investigate. I think that would take care of both situations. It gives him discretion to act as he pleases after he gets the report or after it has been investigated.

SENATOR BUSCH: Well, suppose the district attorney has already made the investigation, of course he usually has before it gets to the Governor, and there is no delay.

MR. PRESSMAN: . . . to read it would not have investigated the case, we would have known nothing about the case actually until the Governor's office notifies us. We would not have investigated it first, under the procedure, because the first thing that would happen—

SENATOR BUSCH: This is where the other state seeks the man?

MR. PRESSMAN: Yes sir, so we would have not investigated, we would not have known about it.

SENATOR BUSCH: Oh I see, of course, I missed some of this——

SENATOR DOLWIG: This is the thing that bothers me because you may have the Governor's office, nothing coming to his attention and unless there is some responsibility here, the Governor can perform it, may act, and a week later finds out that these facts come to light and there he's stuck, he has made his decision, that is what bothers me and so is the guy in the soup.

MR. PRESSMAN: Well, our present procedure is this, when a defendant is arrested here in Los Angeles County on a warrant from another state, what we do is ask the court to grant a 30-day continuance. We then suggest to the defendant that he or his attorney communicate with the other state and request them to file an action under the reciprocal support law, and normally they are happy to do that. So we do, as a practical matter, what will be done under the statute.

SENATOR DOLWIG: All right then I will make a motion that we insert in line 5 "shall" instead of "may require" and leave the other as it is. I think that solves the problem.

SENATOR GRUNSKY: Now, Stan, is that all right with your point? All right all in the favor of the motion signify by saying "Aye"—contrary minded. Motion is carried.

MR. PRESSMAN: Now the next Section 7 of the Uniform Act provides a presumption that the defendant was in the responding state during the period for which support was sought until otherwise shown. Our present C.C.P. 1670 omits this presumption but gives the plaintiff an election as to the laws to be followed. We prefer the present C.C.P. Section 1670 as it is. In other words, we are not asking that there be a presumption of any kind, we've had no complaint about the section as it now stands and we feel that there should be no change in presumptions as to where the defendant committed the crime.

SENATOR ARNOLD: Have you any experience with the State of Nevada on this?

MR. PRESSMAN: Not on this particular section, Senator. We have had a number of cases sent to Nevada and we have had them send a number to us. We have had no unusual experiences with them, sir, in either way. We have found them to be co-operative and we on the other hand have been preparing and sending orders to them.

SENATOR ARNOLD: Well, my last information is that they had never adopted the Uniform Extradition Act and——

MR. PRESSMAN: That is not so. You mean the Uniform Extradition Act——

SENATOR ARNOLD: Yes.

MR. PRESSMAN: Oh well, that I do not know about that.

SENATOR ARNOLD: Which deals with the change as you know, where the state in which the act was committed. They are evidently treating the reciprocal act much better than they have some of the others.

MR. PRESSMAN: Well sir, they have been following the reciprocal act satisfactorily as far as we know, they haven't objected to any of these provisions and they have been filing and they have been honoring ours too in Nevada. And that Section 7 simply as far as we are concerned would leave the law as it is in our present section we did not

want to monkey around with it changing presumptions, we felt that there was no need for it.

SENATOR BUSCH: There is only one thing here about this though that I don't quite get it clear in my head and am a little bit concerned about it. The duties of support applicable under this law are those imposed or impossible under the laws of any state where the obligor was present during the period for which support is sought. Well, supposing in the other state they are seeking support for a period of eight months and they find out that he was in California say for only three or four months of that period, would there be some chance for the defendant to escape on a technicality and he wasn't in the State of California during the whole period of eight months during which support is sought?

MR. PRESSMAN: We have an election under the statute? That is, the plaintiff has an election, so the plaintiff can elect to take either situation she desires to do under the election provision which is provided now in our Section 1670—gives her an election, sir, and 1670 reads that "The duties of support enforceable under this act are those imposed or impossible under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced at the election of the obligee," so there would be an election that can be made as to which state or both states she wishes to follow as far as the law is concerned.

SENATOR BUSCH: Yes, but what I am getting at here is where support is during the period for which support is sought, do you think that language should be added there? See my point?

MR. PRESSMAN: Well sir, I think that your point might be covered in another section which we are going to refer to later on in the matter of arrearage and your point would only come into play when there is an effort to collect arrearage which we feel should not be collected under this act. So we would be concerned only with future support, this answers your question indirectly and as far as we are concerned in this jurisdiction and as far as the act would provide if it is amended, there would be no right to arrearage under this act. So that point would be nothing but a mute point if the act is passed. At the present time we find no difficulty with it, sir.

MR. BOHN: As I understand the situation, this Section 7 which is now before the committee is a Section 7 which is being recommended by the Commissioners on Uniform Laws but is the Section 7 with which your office does not agree, is that correct?

MR. PRESSMAN: That is correct.

MR. BOHN: The difference between what is recommended by the Commission on Uniform Laws and that which you prefer will be the subject of my next question. I thought I heard you read a few moments ago from the existing section that in existing law that in making the decision the wife in this case has the option to either proceed under this statute where the husband was present during the period of time for which support is claimed or at her option where she was present, is that correct?

MR. PRESSMAN: No sir, it is where the husband was present in all situations. In other words, she may elect, let us assume that the man has come here from another state, or has fled from one state, then the woman has the election to follow the laws of either state where he has been—well she would have to have been there too. The answer to your question is “yes.” Yes, sir, it is because she would have to have been in one of the states also.

MR. BOHN: Would you read that please again? I am looking for the situation where she was present and he wasn't.

MR. PRESSMAN: All right sir, then we have our Section 1670 as it now exists and to which we feel no change is indicated so far as our experience is concerned. “During the duties of support enforceable under this title are those imposed or impossible under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced at the election of the obligee.” Actually sir, the answer to your question is “yes” because it does specifically speak of the obligor.

SENATOR DOLWIG: May I interrupt you. Let's be specific, let's go back to our woman in Ohio, her husband has come from California, he has been in California for eight months, now what is the application of the existing law?

MR. PRESSMAN: The existing law we may apply to California law and we normally would.

SENATOR DOLWIG: Let's take it one step further and he was a year in Arizona and eight months in California.

MR. PRESSMAN: We may then apply the Arizona law, we may then apply the California law at our election.

SENATOR DOLWIG: That's what you are getting at.

MR. BOHN: Well, one step further, suppose he never was in Ohio? I am thinking of the situation where the wife runs away from California when her husband has always been here, the wife takes off and goes to Ohio, which is the situation that Senator Christensen raised awhile ago. Now, under the existing law could you apply the law of Ohio during the period of time involved?

MR. PRESSMAN: Yes sir.

MR. BOHN: So in this case then the wife has the right to choose the state under which she will be supported.

SENATOR BUSCH: I would like to go a little further on this. In a case where, as far as criminal action is concerned if the defendant has never been in Ohio, it is my understanding that a criminal action could not be filed in Ohio for his failure to provide for his children in Ohio.

MR. PRESSMAN: I presume that if their law in Ohio is the same as ours it would be incumbent upon the prosecution to prove that the man committed a crime in the state from which he is supposed to have fled.

SENATOR BUSCH: That's true and if he had never been in Ohio why he would not have committed the crime in Ohio.

MR. PRESSMAN: I am in agreement with you, sir.

MR. BOHN: But is that true under this law? As I understand this law—

SENATOR DOLWIG: Are you talking about this law, the existing law?

MR. PRESSMAN: The existing law.

SENATOR DOLWIG: Oh, all right.

MR. BOHN: As I understand the situation, the crime is the failure to give money to the wife at the place where she is. If that is so, it is possible for these proceedings to be taken against the husband when he has never been there.

MR. PRESSMAN: But sir, this statute refers to civil enforcement and this section is under civil as distinguished from criminal and that is so set up in our California act so that actually we're not speaking of criminal law enforcement here we're speaking of the enforcement civilly under the reciprocal act as distinguished from an extradition or a prosecution. Now I think that the rule probably would be different.

MR. BOHN: Well, let me ask that question. In the case of an extradition procedure is the obligation which is sought to be enforced, the obligation created by the law of the state where the wife was present but the husband could theoretically never have been there?

MR. PRESSMAN: I think not, sir, I don't see how we here in California could extradite a man into California who has never been here and prosecute him for a crime which was not committed while he was here in California. I think we would not have jurisdiction; I think we would fail when it came to a point of venue. It would be incumbent upon us to allege and to prove that this crime was committed in Los Angeles County and I think therein we would fail.

MR. BOHN: Well, perhaps this is not the place to pursue it on this section.

SENATOR ARNOLD: Isn't this provision contemplated to cover the situation where a man, we will say, and his wife and his children have been living in California and he has been supporting them up until today and he leaves and he goes to Ohio and, well, not to bring it up to today but three months ago, and then for this period of three months he has not been present in the State of California and he has not supported his children, and as I understand, the present law then gives the wife the right to bring an action under this uniform act and say that although he was not present in the State of California, he has failed to support his children in the State of California, and as I understand it under this amendment that you have here she would not be able to do that, is that correct?

MR. PRESSMAN: That is correct in my appraisal of it and that is one of the reasons that we felt it should be left as is.

SENATOR ARNOLD: Well, you frequently find those situations because he will deliberately leave in order to avoid his obligation.

SENATOR DOLWIG: Does Section 7—would that remedy that situation?

MR. PRESSMAN: Under Section 7 there would be a presumption that he was in the responding state for the period for which the support is sought until otherwise shown.

SENATOR ARNOLD: But he could rebut the presumption.

MR. PRESSMAN: He could rebut it, but it is our opinion that there has been shown no necessity for that, that our present C.C.P. 1670 is

adequate, we have not run into any difficulty with it; maybe some difficulty could be anticipated but we haven't run into any up to this point.

SENATOR GRUNSKY: Well, Mr. Richter, what is your feeling on it, are you simply presenting it because this is what the Uniform Commission, I mean you are not wed to this?

MR. RICHTER: We're not wed to this, we think as long as we have the basic Uniform Act and whether or not these particular amendments should be adopted in California, each one of them is a question of judgment for the committee.

SENATOR GRUNSKY: What is your personal feeling after you have heard all sides of this?

MR. RICHTER: I really don't have very much of a feeling on it. I am probably in the same position you are, I don't see where any great change is going to be accomplished one way or the other by it.

SENATOR GRUNSKY: Well, maybe leave California's law the way it is unless there is some advantage to keeping it uniform which is somewhat academic. Am I correct on this—variance between the states doesn't have any real serious effects on—

MR. PRESSMAN: No, it is substantially similar in any event to the laws of the other states or it would be.

SENATOR GRUNSKY: Well, what is the wish of the committee, do you want to leave our law the way it is or take this commission amendment?

SENATOR DOLWIG: Well, why don't we leave it as it is and if the Uniform Act is adopted in a number of states, we'll find out what the experience is and we can adopt it later on if necessary.

SENATOR GRUNSKY: All right then, I think we should have a motion though to reflect this because what we will be doing is rejecting the commission amendment retaining the present law. Is there a motion to that effect?

SENATOR DOLWIG: I'll move that we delete Section 7 with the necessary information in the report.

SENATOR GRUNSKY: Retaining the law as it presently exists, all right, all in favor of the motion signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: The next one, gentlemen, is Section 9, which is 1672 C.C.P. This would make it clear that duties of support include arrearage as well as current support. Gentlemen, I want to make it clear to you that this is controversial. I know there will be many that will disagree with us heartily. When I say "us" I am speaking of the judges I refer to, and the district attorney's office here and in San Francisco. We are opposed to the amendment of this section because we feel that the act should be used for the purpose of obtaining future support only, except where the State or the county is entitled to reimbursement for aid given.

The reciprocal support proceedings should not be burdened with issues as to the amount of arrearage or partial payment thereon, we feel. We feel that the question of jurisdiction of the court which made the original order should not be one of the issues at this time in a reciprocal support case. The defendant's circumstances as of the date of the original order without consideration of the present circumstances, that

is, for example the fact that he has acquired a second family, wouldn't be considered under the amended act.

The use of the district attorney as a collection agency for private debts which have been accrued, I think perhaps might be frowned upon. Gentlemen, this is the situation as it presently exists. Another state forwards a reciprocal support complaint to us and they in effect say, "We would like for you to enforce an order that we have that was made ten years ago requiring the defendant to pay a thousand dollars a year and he is now ten thousand dollars in arrears so we therefore ask that our order be enforced in your jurisdiction and that the order be that he is indebted to us for ten thousand dollars." We feel that a remedy is provided for them to collect that arrearage by a lawsuit to have their judgment established as a California judgment.

SENATOR DOLWIG: Now, pardon me, the state in which the woman is at that time, is that what you are talking about?

MR. PRESSMAN: Yes sir. They in the state where the woman is would have to, as in any other case, file an action in California, aside from the reciprocal act, to have the foreign judgment established as a California judgment. In that action there would be issues. Number 1, as whether that was a good judgment in the first place. Number 2, as to whether the defendant was served. Number 3, as to how much the arrearage might be, whether there was payment or partial payment. Number 4, the children might have been emancipated. These things would never show in a reciprocal act.

SENATOR GRUNSKY: If this is adopted?

MR. PRESSMAN: If this is adopted.

SENATOR GRUNSKY: Philosophically, am I not correct that the primary and basic public interest is to keep these people from being a public charge and therein is the only distinction or that is the distinction between that and just a civil debt or arrearage or anything else and there is where you draw the line, you're not to be a collection agency, you are simply to serve the interest of the public to keep them off the welfare rolls?

MR. PRESSMAN: That is it, sir.

SENATOR GRUNSKY: Does the committee agree with that? I mean is that basically what our interest as legislators is.

SENATOR DOLWIG: As long as the woman has adequate remedies, as I understand it, the difficulty is the woman cannot find the husband who has the duties to support them. Through this reciprocal action she finds the husband. Now, what you're saying is when the husband is found and jurisdiction is obtained that the husband should then be required to support them. Now, insofar as what may have happened before, and this is my only concern, is that the woman then has adequate civil remedies to proceed with any arrearages or any past obligations and you say that is present?

MR. PRESSMAN: Yes, that is present and her rights along that line are not curtailed any and issues as to how much was paid could be determined in that particular action and in a reciprocal support action, our concern should be only how much that man is able to pay at this time as distinguished from what he was able to pay 10 years ago when the other state made its support order.

SENATOR DOLWIG: All right, let's go back to the woman in Ohio and the man in California.

MR. PRESSMAN: All right, sir, go back to Ohio. Yes, sir.

SENATOR DOLWIG: Now the woman in Ohio. Let's say there is ten thousand in arrearage, she can establish the Ohio judgment in California and establish it and then determine all the issues which might be covered.

MR. PRESSMAN: Yes, sir.

SENATOR DOLWIG: Well, how about the case where the State of Ohio supported that family for three, four or ten years?

MR. PRESSMAN: I have indicated here that we are opposed to the amendment of this section because we feel that the act should be used for the purpose of obtaining future support only except where the State or county is entitled to reimbursement. And the act now provides that the State or a political subdivision thereof is entitled to reimbursement where aid has been given. And it is the practice in our county in every complaint to name two parties, first the County of Los Angeles, secondly the woman as coplaintiff, our purpose being to get reimbursement money expended, number one, and number two to get an order for future support for the woman and in answer to your question, Senator, the State, or the county or the political subdivision of the State will still have the same rights as it now has and under our present act it gives them that right.

SENATOR BUSCH: Well now, you don't recommend any change at all?

MR. PRESSMAN: That is correct.

SENATOR DOLWIG: Well, now wait a minute, what do you mean by not recommending any change?

MR. PRESSMAN: Well, Section 9, our C.C.P. 1672 provides—

SENATOR DOLWIG: Pardon, you're not suggesting any change to Section 9 under the Uniform Act?

MR. PRESSMAN: Well, Section 9 is the new Uniform Act.

SENATOR GRUNSKY: He's suggesting that we reject this section in the proposed amendment which would leave the existing law the same as now appears C.C.P. Section 1672.

MR. PRESSMAN: That is right.

SENATOR BUSCH: Let's take this case though in Ohio where the woman is living in Ohio with her children and her husband has come to California, or the father of the children has come to California and the State of Ohio supported this family say for three years. Do you think it would be improper or proper for the district attorney's office of Los Angeles County to, in this action against the husband in California to force him to pay up, to reimburse the State of Ohio?

MR. PRESSMAN: I think that would be proper and I think that is covered by Section 1672, yes. And that is covered by 1672.

SENATOR DOLWIG: And it is not in the Uniform Act?

MR. PRESSMAN: The new Uniform Act would give that but in addition would provide for arrearage to the woman.

SENATOR GRUNSKY: They are opposed to being a collection agency and I do not blame them on that.

MR. PRESSMAN: That's where we draw the line. She would still be—the jurisdiction would still be entitled to reimbursement. The Uniform Commissioners felt that they should get reimbursement, however, for the arrearage, that would be different.

SENATOR DOLWIG: Well, then, we can get it down to cases. Section 9 then you would be in favor of taking out including arrearage?

SENATOR GRUNSKY: No, you do not have to change the existing law at all.

MR. PRESSMAN: Leave 1672 the way it is and there would be no changes.

SENATOR GRUNSKY: Then the county gets reimbursed and you take care of future payments and that's it.

SENATOR DOLWIG: I am just wondering about the mechanics, are you in favor of deleting Section 9 of the Uniform Act?

MR. PRESSMAN: That's right, but leaving 1672 which it proposes to replace.

SENATOR GRUNSKY: It will be the same motion as on the last one.

SENATOR BUSCH: You won't find one case out of a hundred say where a woman outside the State of California will file an action in that state and then have to go to pursue another action in this State actually to carry out the judgment you might get in the other state and execute on in this State. You will not find one case out of a hundred, she probably got into debt and so on. It seems to me that the district attorney's office should help that woman get money that is due her for the past support in order for her probably to pay off her bills.

MR. PRESSMAN: That, sir, is what makes it a controversial matter.

SENATOR GRUNSKY: Isn't that for her private attorney, he can take—

SENATOR BUSCH: Oh, but who is going to—it is a very cumbersome procedure to file an action in Ohio for instance, and then have to come to California to sue on your judgment in California.

MR. PRESSMAN: Well, presumably she has a judgment in Ohio already.

SENATOR BUSCH: Well all right, we'll say she has a judgment, you have to sue on that in California, that costs money.

MR. PRESSMAN: Well sir, in all these cases there are substantial arrears and she might be able to get an attorney to do this on a contingent basis if necessary.

SENATOR BUSCH: I doubt it. In the first place she probably doesn't know what she can do about it, she won't go to an attorney, and in the second place, if she does he is going to charge for it both in Ohio and in California and it's practically impractical for her to pursue that course.

SENATOR GRUNSKY: It would put a charge upon the county, the cost of this legal service would be placed upon the county and be an expense to the county, would it not, to collect this arrearage?

MR. PRESSMAN: Definitely, and may I add this sir, let me tell you what happens in many of these cases if I may. In a complaint from the other state, under the present section, it is alleged that the defendant is \$8,000 in arrears, that they want to get money for future

support in addition. The defendant comes into court and he says "I have no objection to paying for the support of my children from here on in whatever the court directs, but I don't owe Emilie \$8,000, I paid her \$700 then and \$800 then and \$600, so the point and issue is how much I owe, I am not quarreling with what I have to pay in the future but I am quarreling with what I owe," and that I say is one of the elements that should be resolved in an action for the purpose to determine how much this man owes and this shouldn't be in a reciprocal support suit.

SENATOR BUSCH: He should have some cancelled checks then or some money order receipts or something like that and besides that you don't have very much proof so if he has paid, he has the advantage over you merely by going to court and testifying that he has paid and then the case falls.

SENATOR GRUNSKY: No, but Jim if you have ever handled collections in your office, it is the most time-consuming, the most difficult and expensive thing and it's almost a loss to handle collections on this type of thing, and if you burden your office with that, you're either going to have to put on additional staff at great expense—

SENATOR BUSCH: They do have additional staff to take care of these problems alone. In almost every kind of state you have your own setup, your own office that handles this in connection with the district attorney's office, but he's a special officer, he does not have to be an attorney and they take care of these situations and I do not know what the setup is in Los Angeles County. I've had several of these cases and we go into court and we prove the defendant had lived in the State of California, in my county when I was district attorney up in Mendocino County, that he had lived there for several months or several years and he usually admitted that he had supported his family, the court made an order at the same proceeding that he pay so much on the arrears and also pay in the future, all in the same proceedings and it wasn't very difficult.

MR. PRESSMAN: It isn't difficult where the defendant comes in and he admits that he owes \$8,000, but it becomes difficult when he talks about partial payments, he talks about the time when he had the child in his custody six years ago for four months with the approval of the mother and he talks about whether or not they had jurisdiction over them when they got the judgement in the first place.

SENATOR BUSCH: Also you are talking about civil actions and your only enforcement there, what is it, a contempt proceeding or levies of execution or what?

MR. PRESSMAN: If it were reduced to a California judgment then of course we would have both.

SENATOR BUSCH: Well, all you have to say in those cases where he doesn't admit it is that you don't have any proof to the contrary, the court can accept his statement but you will find that I think most of those defendants will come and admit that they have failed to provide for the family in the past and here if you don't have this provision for collecting the arrears you are denying the woman and I would say in 75 percent of the cases an opportunity to recover some of the money that she has had to pay out for the support of her family and for which she is probably in debt at the present time.

SENATOR GRUNSKY: No, but I think what you're missing, Jim, is that if money has not been coming in, she's probably been a public charge and at the present time the county can come in and claim its money.

SENATOR COOMBS: I'm not sure as to that point, Senator, and I want to get that clear.

SENATOR GRUNSKY: If you collect \$8,000, you know that is going to go for an automobile or a fur coat or something else and I just don't think the counties are responsible for that. But we understand the basic issue to bring this to a head. All it amounts to is do you want the counties to act as a collection agency, gratuitously, for these divorcees or obligees or whatever you call them or do you not?

SENATOR BUSCH: I do and I know I don't expect the county to go all out and spend a million dollars in each case to refute what the defendant has to say about the situation, but I do believe, as I said before, that in most of these cases the defendant will come in and admit that he has, yes, he has failed to provide for his family for a year or something like that, he hasn't been in contact with them and the court can very easily order—well then you should make up your arrearage to a certain extent and also provide for future support, and if you do not have something like that in the law why then you deny the woman a chance to get some reimbursement.

MR. PRESSMAN: Of course Senator, there are many who share your views.

SENATOR GRUNSKY: Gentlemen, let's bring this to a head so we can move along, what is your feeling on it? Do you want to leave the present law the way it is, which gets the counties reimbursed and takes care of current and future payments or do you want the counties in the collection business on arrearages.

SENATOR COOMBS: Mr. Chairman, if the county is going to go into the business of acting as a collection agency, I think it should only apply where there are children.

SENATOR GRUNSKY: But the wife is still the one who gets the fur coat or the automobile from the proceeds.

SENATOR ARNOLD: I would like to ask a question Mr. Chairman of Mr. Richter. Are those proposed amendments to the Uniform Act, these are not in effect in any other state at the present time?

MR. RICHTER: Not at the present time, they again were just approved at the conference in August.

SENATOR ARNOLD: Well, I would also like to offer an opinion on this subject, Mr. Chairman, to be realistic about it, we have, everyone will, agree, we've had some difficulty in getting co-operation of district attorneys in our own State and in many other states and I think the less cumbersome and complicated that you can make this thing that the more successful it is going to be and that refinements can well await the perfection of what we want to accomplish, as Senator Grunsky says, in removing them from the rolls, the relief rolls of our states now.

SENATOR GRUNSKY: That is what I am primarily concerned about. I'm not slapping a big extra cost on these just for the District Attorney's office.

SENATOR ARNOLD: I would be in favor of deferring action of this adoption on this sort of amendment until —

SENATOR DOLWIG: Well I move that Section 9 be deleted.

SENATOR GRUNSKY: From the proposed draft which will then retain the present law in its present form.

MR. PRESSMAN: Which is Section 1672.

SENATOR GRUNSKY: Yes. All in favor signify by saying "Aye." Contrary minded.

SENATOR BUSCH: No.

SENATOR DOLWIG: Well, Jim, here is my thinking on the thing. If we remove Section 9 we are going to leave the law as it is. From what you have indicated and what has been brought out here in many cases the judges, on the basis of their discretion, can make orders for arrearages if the judges are satisfied and I think that will take care of the problem that you put up here.

SENATOR GRUNSKY: Even now, in California we are not even involved in this reciprocal act, you've only got your civil remedies through your private attorney why should you, I mean my point being why the grounds for distinction just because he is out of the State? All you've got is a civil remedy; you can't get him in contempt for arrearages.

SENATOR BUSCH: People do not bring actions, women don't bring actions, they won't in one case out of a hundred.

SENATOR DOLWIG: Well, Jim, if we keep the existing laws as is, we're not tying the hands of the court as a practical matter, they can make judgments for arrearages, isn't that true?

MR. PRESSMAN: Yes sir, I think that the court has power to do it.

SENATOR BUSCH: I know that is what we have done in Mendocino County; the court has made orders directing that the defendant make up arrearages according to law.

MR. PRESSMAN: There is nothing to prohibit the court from doing it, Senator, under the existing statute.

SENATOR GRUNSKY: Well, the motion is carried though and actually we are now ready for the next item of business, so the record shows that Senator Busch voted "no" on the motion.

SENATOR GRUNSKY: What is the next one?

MR. PRESSMAN: The next one is number 12, Senator Grunsky.

SENATOR GRUNSKY: Right.

MR. PRESSMAN: Gentlemen, I anticipate that it will take me about 30 to 35 minutes to finish. Gentlemen, Section 12 of the proposed act provides that the district attorney *shall* represent the plaintiff upon the request of the court in a reciprocal support case. C.C.P. 1674 provides that he *may*. We prefer the California section as the court would not be in a position to know all of the necessary facts when it refers a prospective plaintiff to the district attorney for representation. It's really the change of the word from "shall" to "may" that we object to. We feel that the act as it is now on the books should remain in that section.

Frequently a woman goes to the court and indicates that she would like the district attorney to represent her in a reciprocal support case, the judge then says "All right, go and see the district attorney." We would like the privilege of going into the facts to determine whether

the case has merit or not. If we feel it has merit we would file it, if we feel it hasn't merit we won't. The judge has no way of determining those things, he simply sends it to our office. The present section gives him the power and says he may request it to do so and we feel that that should remain as it is so that we can determine whether an action should be filed. The judge doesn't go into facts actually, he simply sends the woman to our office and we do not want that to indicate that there is a mandate that we shall represent her, which actually it is not intended that way. We recommend that the statute remain as it is as far as 1674 is concerned.

SENATOR GRUNSKY: Mr. Richter, do you have any recollection of the discussions at your commission hearings?

MR. RICHTER: Yes, I do. The reason for suggesting the change in the word "may" to "shall" was because, while not true in California and a good many of the states, there was a reluctance on the part of the prosecuting attorneys to undertake this type of case, and it was in order to put a burden they make it part of their duties to undertake these cases at least upon request of the court, that the word was suggested to be changed. I don't know personally of the necessity for the change in California, but I am sure from what I have heard that the Los Angeles District Attorney's office is handling these things in all cases in which they properly should be handled, but I do just want to bring that to your attention so that you will have the reason for the change.

SENATOR DOLWIG: I move that Section 12 be deleted.

SENATOR GRUNSKY: There is a motion that Section 12 of the proposed draft be deleted so that the law will remain the same as it presently exists. All in favor of the motion signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: The next is Section 15, gentlemen, it has to do with fees and costs. There has been quite a controversy over whether there shall or shall not be fees in different jurisdictions. Section 15 provides fees and costs—

SENATOR GRUNSKY: I think it would be easier—could you say first what the present law is and then the change because, see ordinarily when we consider bills we have the original law before us and we are handicapped in this that we don't, so just paraphrase in your own words what it now provides and then what your changes are.

MR. PRESSMAN: The present Section 1677 now provides in effect that the court of either state may in its discretion direct that any part or all fees and costs shall be waived including fees for service of process, seizure of property and so forth. Where the action is brought by or through the state or a subdivision there shall be no filing fee or library fee or reporters fee. The proposal under the new Uniform Act is that there be no fees charged to the plaintiff, to the woman, but these may be charged to the defendant father when the court feels it proper that they should be.

SENATOR GRUNSKY: Then that is the new part?

MR. PRESSMAN: That is the new part, we have no objection to it, we recommend it, but feel that it should be changed to conform with our own requirements to read as follows: This is merely adding to what the uniform one is proposing, it includes everything and will read as

follows: "There shall be no filing fee or other fees or costs" the words "fees or" is added by me "costs taxable to nor required from the obligee" which is our plaintiff "but a court of this state acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this state including without limitation by enumeration appearance fees, library fees, reporters fees, and fees for filing, service of process and seizure of property and stenographic service of both the plaintiff and the defendant or either, be paid by the obligor, that's the defendant, or the county, city, municipality, state or other political subdivision thereof."

SENATOR GRUNSKY: Well, you're not changing the substance, you're just changing the language.

MR. PRESSMAN: That is correct, sir, to include filing fees and so forth. We recommend it.

SENATOR GRUNSKY: Is there any discussion on that, gentlemen? I can't see any objection. Our motion then that Section 15 as contained in the proposed draft be recommended approved, as amended.

SENATOR DOLWIG: As suggested amendments.

SENATOR GRUNSKY: Yes, all in favor of the motion signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: Now, number 19. Section 19 is a new section, it is designed to permit the petition to follow the defendant from county to county and from state to state thus obviating the need for a new petition from the initiating state in cases where the defendant goes from county to county or state to state after an original petition has been filed by the initiating state. We have no objection to this amendment as far as it permits change of venue from county to county, for we are now following the general change procedure in California. However, we oppose any provisions which would contemplate the change of venue from state to state.

We feel that the new petition should be initiated where the defendant is not found within the state to which the petition has been sent. If, for example, Michigan forwards a complaint to this county and we learn that the defendant is actually in Illinois, there is no procedure through which we could forward all of the documents received because the originals have been filed. We could not forward all of the documents received from Michigan to the Illinois court nor should we act as an intermediary between Michigan and Illinois and be in the middle of that lawsuit. We feel that in those instances the initiating state should file a new petition for the state in which the defendant was found. If the defendant is in another county or in our own state we follow, and should follow and are willing to follow the regular change of venue procedures. We feel that we shouldn't be in the middle of a case where a man has gone from one state to another and California is not involved in any way. We feel that we would have no objection to the statute providing it concern only transfers from county to county.

SENATOR GRUNSKY: Mr. Richter, what is the sense of the commission now on the light of these proposals?

MR. RICHTER: The reason for this, of course, was to keep the initiating state from having to go ahead and making new copies and initiate a new proceeding in another state when the defendant has gone from one state to another. The purpose, of course, is to make these pro-

ceedings just as easy to follow through as possible to the extent that there's a problem of removing documents it seems to me that the section takes care of it in authorizing the clerk to forward all of the documents to the succeeding state. The only question to me is one of policy, as to whether we should put any burden upon our state officials here to proceed to follow through to put it forward to the next state or whether just to report back to the initiating state that the defendant is no longer here.

MR. BOHN: Now are these all civil proceedings we are talking about?

MR. PRESSMAN: They are all civil proceedings, yes, sir.

MR. BOHN: Is there any other place in our law where civil process is transferred in this manner?

MR. PRESSMAN: None that I know of outside of the state; of course; we follow the regular change of venue in other——

MR. BOHN: From state to state?

MR. PRESSMAN: Not to my knowledge.

MR. BOHN: Is this patterned after procedure in criminal warrants, is that where it comes from?

MR. PRESSMAN: Not to my knowledge it isn't.

SENATOR GRUNSKY: Would it be purely a voluntary gratuitous act of California or the moving state to no benefit to California but to convenience and expedite it for other jurisdictions?

MR. PRESSMAN: Yes sir.

SENATOR GRUNSKY: And the benefit of a then nonresident obligee?

MR. PRESSMAN: That is correct.

MR. RICHTER: As to the extent that the act is adopted on a widespread basis California gets the benefit of the simplicity of the proceedings in reverse with the initiating state going after the absconding father in another state.

SENATOR GRUNSKY: Yes we get our benefits in reciprocity.

MR. PRESSMAN: Gentlemen, speaking as an initiating state if we were to initiate a complaint and send it to one state and we are advised that that defendant has moved to another state it would be much easier for us to file a new petition in the second state than it would to have the state to which we have sent it forward the papers there. That simply makes for complications, we would rather start a new proceeding, send a denovo to the other state and start all over again. To us that would be less trouble.

SENATOR DOLWIG: In that way you would keep control of your own process?

MR. PRESSMAN: Yes, sir, otherwise we would not know, although the act does contemplate that the initiating state should be notified.

SENATOR GRUNSKY: Now let's get straight. Are you suggesting amendments to 19 or that we delete the proposed Section 19?

MR. PRESSMAN: As far as I am concerned it can be deleted.

SENATOR GRUNSKY: Leave the law the way it is?

MR. PRESSMAN: Yes.

SENATOR DOLWIG: I'll move the deletion.

SENATOR GRUNSKY: All right, all in favor of the motion signify by saying "Aye," contrary minded. Motion is carried. It is recom-

mended that the law remain as it is deleting the proposed Section 19.

MR. PRESSMAN: The next is Section 22 which has to do with evidence concerning husband and wife. California omits and may be compelled to testify this omission from California's Section 1688 seems proper and we should not insist that the husband or wife be compelled to testify in these cases. Our present 1688 provides that the laws attaching to the privilege against disclosures of communications between husband and wife are inapplicable to proceedings under this title. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage. We feel that they are competent, we feel that they should not be compelled to testify against one another except as set forth in our section we feel that 1688 is OK as it is and shouldn't be changed.

MR. RICHTER: I have a different view on this. I understand the present laws we have in California permit the husband or wife to be compelled to testify against the other——

SENATOR GRUNSKY: We amended that in 1957, did we not?

SENATOR DOLWIG: We did something with it.

SENATOR GRUNSKY: John, do you remember that where I think it was in sanity proceedings and some others that we——

MR. BOHN: It is my recollection that you can now compel the testimony in certain types of situations.

SENATOR GRUNSKY: Offenses against the husband and wife and one thing and another.

MR. RICHTER: Actually, the amendments proposed by the conference simply make it optional with the State as to whether or not they should be compelled to testify.

SENATOR DOLWIG: Well, no, that isn't what Section 22 does, is it?

MR. RICHTER: Yes, if you look at the, what we mean by the brackets there around the words "and may be compelled" is that it is optional with the State whether or not to adopt that language.

SENATOR DOLWIG: In other words, in the passage of the Uniform Act it means optional whether they want to include "and may be compelled."

SENATOR GRUNSKY: Well, gentlemen, isn't this the point, either the present law as recently amended allows this or the general thinking that we adopt it is that this type of proceeding doesn't justify the privilege where you have an adverse proceeding between the spouses the whole basis of the law of privilege between husband and wife is eliminated. That is my understanding of it, if you are not married any more there is no tranquility of the home to be maintained or anything else.

MR. PRESSMAN: Well Senator, I just observed the change that Mr. Richter was talking about, under the circumstances we will have no objection.

SENATOR GRUNSKY: All right then we can take 22 as it appears in the brackets. Are the members of the committee in accord with that?

MR. PRESSMAN: As far as we are concerned we now have no objection.

SENATOR DOLWIG: Well, don't you have the same situation where you have an order to show cause, they are testifying against each other and you have the same situation applying here.

SENATOR GRUNSKY: The only reason for the privilege was to maintain the tranquility of the home and avoid adverse interest in an existing domestic situation.

MR. PRESSMAN: We would withdraw our objections, Senator, under those circumstances.

SENATOR DOLWIG: I still want to ask Mr. Richter that substantially this Section 22 does not change the present situation in California?

MR. RICHTER: That is correct, because if we wanted to leave 22 with the bracketed language in then it isn't an amendment at all.

SENATOR GRUNSKY: Senator Dolwig, is yours a question of drafting that there is no point putting something in which is already in existence under the general laws of evidence?

SENATOR DOLWIG: Yes.

SENATOR GRUNSKY: We're being redundant or possibly——

MR. RICHTER: Well Senator, it is already in the specific section of the present Reciprocal Enforcement of Support Act.

SENATOR DOLWIG: As long as it doesn't change the present California law and Section 22 is in accord with it, there is no objection.

MR. BOHN: May I ask this question Senator? In other words, is this correct, that the proposal then in Section 22 is to delete this language from the present law, is that correct?

MR. PRESSMAN: No, it isn't, sir.

MR. RICHTER: This is the very thing that's before us. The conference put it in so that it would be optional with the State as to whether or not they wanted to delete this language from the existing law. There had been some question about compelling the husband or wife to testify against each other in these proceedings.

SENATOR GRUNSKY: Well the sense of what we want is that the privilege cannot be exerted because there is no longer any cause for it in this type of adversary proceedings, now does this accomplish it?

MR. RICHTER: Then I think all we need to do is to leave the present law the way it is.

MR. PRESSMAN: That is correct sir.

SENATOR GRUNSKY: All right.

SENATOR DOLWIG: Then you delete Section 22.

MR. RICHTER: Delete Section 22.

SENATOR GRUNSKY: All right then the motion is that we delete Section 22 from the proposed draft and recommend leaving the law as it presently exists.

MR. PRESSMAN: Which is 1688 C.C.P.

SENATOR GRUNSKY: Thank you. All in favor of the motion signify by saying "Aye." Contrary minded. Motion carried.

MR. BOHN: May I ask one question?

SENATOR GRUNSKY: Yes.

MR. BOHN: I hate to delay this matter, but what would be the circumstances where the husband or wife would not want to testify against one another in this situation and therefore that the word "compelling" would be important?

SENATOR GRUNSKY: No, no, remember the privilege runs to the one against whom the testimony is to come and if the wife wants to testify against the husband it is the husband's privilege and he would exert it and defeat the showing of evidence.

MR. BOHN: In this situation the wife brings a proceeding or is party to the proceeding, now the husband then refuses to testify, is that what we are getting at with this particular problem here?

SENATOR DOLWIG: No, I think it would clarify it if you would just paraphrase what is in the existing law.

MR. PRESSMAN: Well, here is the existing section, sir. The existing section provides this, "that laws attaching to privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this title, husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage." That's the present one, the new section, as proposed, does not change the effect of that so it makes no difference whether we take a new section or leave the old section. Naturally, they both have the same effect, which means the man can be compelled to testify.

MR. BOHN: Why was it then that the commissioners in this case thought that "and may be compelled" should be deleted or at least it would be desirable to delete it?

MR. RICHTER: They did not express that opinion John, they only thought it would be optional to leave it with the states at their option as to whether or not to put this particular provision in.

SENATOR DOLWIG: We are exercising our option by using option of the law.

MR. RICHTER: You are exercising your option——

SENATOR GRUNSKY: Right. All right next item.

MR. PRESSMAN: The next one is Section 23, the California Act does not have this section. Section 23, the proposed section, provides that in any hearing under the reciprocal act the court shall be bound by the same rules of evidence that bind the juvenile court. The California Act does not have this section which would relax the requirements that the technical rules of evidence should be followed in order that the issues and admissions of testimony may be adhered to. This is especially important in cases where an appeal is taken. In other words we feel that the technical rules of evidence that are now followed should continue so that a record can be made in the event of an appeal and appeals are taken frequently, well occasionally.

SENATOR GRUNSKY: All right then, that is as it shows in Section 23 in the proposed draft?

MR. RICHTER: May I point out Senator this is only again a bracketed section, optional, and we make no recommendation on it.

SENATOR DOLWIG: I move that Section 23 be deleted.

SENATOR GRUNSKY: All in favor of the motion signify by saying "Aye." Contrary minded. Motion carried.

MR. PRESSMAN: Section 24 provides for the enforcement of reciprocal support orders anywhere in the State, we have no section like that now. It provides for the enforcement of reciprocal support orders anywhere in the State. We do not need this section, for in California writs of execution may be issued in any county. We feel that it is not

necessary that we have it, if you gentlemen want to enact it for the convenience of the other states so it will be uniform in all the states we would have no objection, but we feel that we do not need it, that is Section 24, provides that these orders may be enforced in any other county which is now the situation.

SENATOR GRUNSKY: Well I do not believe in having duplicating sections on the same things, myself. Mr. Richter what is your feeling, do you go along with this?

MR. RICHTER: Yes, I go along with this. I feel this section is unnecessary in this State.

SENATOR GRUNSKY: Yes, to avoid redundancies, the motion is that it be deleted. All in favor of the motion signify by saying "Aye." Contrary minded. Motion carried.

MR. PRESSMAN: Section 26 is similar to our 1685 which provides in effect that the court may order the defendant to make the payment either to the court trustee or to the obligee plaintiff. The suggested amendment is that the words "or the obligee" be struck so that the payments now can only be made to the court and not direct to the woman who sometimes forgets that she received the money. We go along with the omission of the words "or the obligee" from the statute so that 26(b) will be approved if you gentlemen go along with that.

SENATOR GRUNSKY: Well, you don't feel that you are burdening yourself eternally with having to process these, don't you sometimes welcome the chance of getting the file off your desk and letting it be paid directly to the obligee?

MR. PRESSMAN: No, Senator, for the reason that ultimately we get a complaint from the other state that the payments are not being paid, we have no way of verifying that.

SENATOR GRUNSKY: All right you would rather keep the records than to have to investigate it afterward.

MR. PRESSMAN: We want to keep the records, we want to know whether they're paid or not.

SENATOR GRUNSKY: All right, any question on that?

MR. PRESSMAN: We approve that.

SENATOR GRUNSKY: Then a motion—Is this the whole section or—

SENATOR DOLWIG: Isn't there something more involved, aren't you running across the problem that the obligee's a party in interest here and are you taking something fundamental away here when you say that it can only be paid to the court will the court then make the payment to the obligee except to the extent that he money may be forwarded for state purposes to the initiating state?

MR. PRESSMAN: Well sir, this is designed so that the payment, the entire procedure here was designed so that the payment could be made to the other jurisdiction to the court that actually initiated the proceedings so that that court likewise can have a record. Now, there is a more practical reason for it and simply eliminating this woman from getting the money direct and it is this, when the other state notifies us that the payments have not been received in the other jurisdiction then we can assume that they're telling the truth. Then they ask us to run a writ of execution, this we do by obtaining an affidavit

from our court trustee here showing that the payments have not been made. We are not in a position where we must get an affidavit from the other state. If we want to get a writ of execution, all I do now is to get an affidavit from the court trustee, the person to whom the payments were supposed to have been made, he has not received them and then we are in the clear. He can be examined and cross-examined, the other way we run into complications when we are relying on the woman in the other state. I don't think anyone would object to this.

SENATOR GRUNSKY: We have the motion then that Section 26 be recommended approved. All in favor of the motion signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: The next is Section 26(c), which is our C.C.P. 1685, which in effect states that the defendant can be punished for contempt as in any other case. This has not been discussed with the Counsel of State Governments nor with the Uniform Commission, but we suggest that the court have the power to punish a defendant for contempt for wilful failure to comply with a reciprocal support order, punishment to be for a period of not to exceed one year in the county jail. We understand that in Michigan where they have such a provision in the reciprocal act, defendants do not take contempt proceedings as lightly as they do here. It would give the proper power to the court to send a man to up to a year to the county jail for contempt as distinguished from five days. That might or might not be controversial, I don't see how anybody can object.

SENATOR GRUNSKY: Don't you already have the power to punish for contempt for failure to comply with that order?

MR. PRESSMAN: Yes, but the power is limited to the court to five days.

SENATOR DOLWIG: In the existing law?

MR. PRESSMAN: In the existing law and that takes in all contempts not just these.

SENATOR DOLWIG: Yes, that is what I mean.

MR. PRESSMAN: And we feel that in these cases the court should have the power to sentence.

SENATOR GRUNSKY: It would be discretionary.

MR. PRESSMAN: It would be discretionary and I'm sure that a court would not send a man to the county jail for a year in a case of this sort but I think perhaps—

SENATOR GRUNSKY: What is the feeling of the committee on this? Yes, Mr. Bohn.

MR. BOHN: Are we talking about Section 26(c) in the model act? The proposal then that is here is to punish the respondent, does that mean that respondent comes out or is it going to stay in the brackets?

MR. PRESSMAN: Well, the word "respondent" and "defendant" are interchangeable depending on what state they are in. We call them defendants in ours, sir.

SENATOR GRUNSKY: Well then we'll want to use the word "defendant" in our draft. Well the record will so show, and have we put the motion yet on this, I think we have that—

SENATOR DOLWIG: I would like to raise one question whether the one year, Mr. Richter, is there any discussion on that as to the time or is this merely a—

MR. RICHTER: This proposal originates from the district attorney's office. I don't know enough about it, gentlemen, I have to leave it to you.

SENATOR GRUNSKY: Well, it is just a question of penalty, of how tough you want to be on the defendant, it is discretionary with the court and you all handle enough domestic relation problems to know.

SENATOR DOLWIG: Yes, but here you have involved the punishment by contempt. I'm wondering whether a year isn't rather drastic.

MR. PRESSMAN: Sir, we have indicated that it shall have the power of not to exceed one year, there is nothing of course which keeps the court from sentencing the man to ten days or five days or one day even, but the fact that the court's hands are tied and limited to five days. I have heard a court say, "if I could sentence you to more than five days, I would."

SENATOR DOLWIG: Well, I will agree with that, but we have some judges that sometimes go a little overboard too and if they have the year limitation it may be a little drastic.

SENATOR GRUNSKY: Well, aren't there some ways you are in until you purge yourself of your contempt too?

MR. PRESSMAN: We have had no punishments along that line, conceivably it could be so, but we have not that I know of in the State any case in which the defendant has been put in the "clink" until he has purged himself of the contempt.

SENATOR DOLWIG: Well, of course, many judges make that order.

SENATOR GRUNSKY: Yes, well the thing I am getting at is if all it is if you are in for five days and it's all you are in then you are out then what, you have to bring him in again with a citation again?

MR. PRESSMAN: That is right.

SENATOR DOLWIG: I was wondering whether it should be 30 days or six months rather than a year.

MR. PRESSMAN: Well, the reason we said one year was because that is what they had in Michigan and they have indicated that since they've had that they have had better luck.

SENATOR DOLWIG: Yes, but I have had some experience with the Michigan laws that weren't very good too.

MR. PRESSMAN: Well, I'm not pressing the point for one year but I feel that five days is not sufficient.

SENATOR DOLWIG: Well, I'll agree with that.

SENATOR GRUNSKY: All right, Mr. Bohn.

MR. BOHN: I would just like to ask two questions. What is more serious about this contempt than any other contempt of court?

MR. PRESSMAN: Well, another contempt might be the defendant telling the judge to go to hell. The court might feel very badly about it but the court is limited to sentencing him to five days and perhaps should be.

MR. BOHN: Now, is the effect of this amendment, if adopted, that all persons who are subject to this reciprocal act can be sent to jail for not more than one year?

MR. PRESSMAN: That's for willful disobedience of the court order, and it would have to be willful, it would have to be shown that the man

had the money and didn't send it after the court had ordered him to do so.

SENATOR GRUNSKY: Yes, but we still do not jail people for debt and we don't want to get into that.

MR. BOHN: I'm wondering if this isn't getting awfully close to it. Are you getting back to your alimony jails again?

MR. PRESSMAN: Well, the court has the power to send the man to jail for failure to provide in the criminal case for up to a year, sir. Wherein is there a difference?

MR. BOHN: Well, criminal prosecutions have different safeguards around them than this proceeding.

MR. PRESSMAN: That's true.

MR. BOHN: This is a civil proceeding, as I understand it, from start to finish and we're operating on evidence which is obtained in a state, not California, excepting so far as you bring your separate proceedings.

MR. PRESSMAN: Well, sir, in this proceeding here our judge has found that the defendant has the ability, we'll say, to pay \$30 a week, the court then has directed him to pay to the court here the \$30 a week. It is the willful disobedience of that order that is concerning us, we're not concerned with the disobedience of a court order in the other state.

SENATOR GRUNSKY: Well, gentlemen, as a point of order and in the interest of time, these are going to be recommendations, the bill itself will be heard in the session. If we're in disagreement as to the period of time I think we should defer it.

SENATOR DOLWIG: Well, I'm going to bring this thing to an issue and I am going to move that (c) remain as it is.

SENATOR GRUNSKY: That the law remain as it is and we delete (c).

SENATOR DOLWIG: No, this merely says that to the same extent as is provided by law . . . state. And I now move that these remain in this as it is.

SENATOR ARNOLD: Question, Mr. Chairman. What is our present law on this?

MR. PRESSMAN: Our present law is that he may be punished as in any other contempt, which is five days.

SENATOR GRUNSKY: Then we do not need this. We can delete this.

MR. PRESSMAN: We can delete it if you gentlemen feel that the court—

SENATOR GRUNSKY: The court already has that authority without (c) then. Then we don't need (c) so the motion is that (c) can be deleted from the draft on the theory that it is already the present law and it would be redundant and unnecessary to incorporate (c).

MR. PRESSMAN: Well, in order that the record would be clearer, Senator, the present law is that the court can only sentence him to five days, if that was your intention then you're right.

SENATOR GRUNSKY: That is right and that is all we would do if we adopted (c) in its present language in the draft therefore we do not need (c) and the motion is that it be deleted. All in favor of the motion signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: Section 32 of the section makes the act, we have

no similar one now to refer to compare with it, but Section 32 of the proposed act makes the act applicable between different counties in the same state. We feel that this provision is not necessary in California but we would have no objection to it providing the district attorneys in the initiating and responding counties were not required to represent the initiating plaintiffs. There are some states that have enacted their statutes so that they could use the reciprocal act between counties as they now do between states.

SENATOR GRUNSKY: Now again if we don't need it let's not clutter our statutes up. Is there something in this that will give some benefit or if we don't need it why—

MR. RICHTER: This again is a bracketed section upon which we make no recommendation and my personal belief is that it is not necessary.

SENATOR GRUNSKY: Well, then the next motion appears to be before us without saying, motion is that Section 32 be deleted from the draft. All in favor signify by saying "Aye," contrary minded. Motion is carried.

MR. PRESSMAN: The next one, gentlemen, is the last and they are Sections 33 to 38 inclusive which are known as Part 4. Part 4 is entirely new as far as the act is concerned.

SENATOR DOLWIG: Pardon me, when you say "new" do you mean that there is no existing law in California?

MR. PRESSMAN: That is correct, sir, however, it is proposed in the Uniform Act. We are opposed to it. The act is entirely new, it provides for the confirming in any state of a support order from another state thus making it unnecessary once an order is issued in any state to initiate a new petition for a new order each time the defendant moves to another state. We are opposed to this for the following reasons: Number 1, let us assume that the court in another state has made an order requiring the defendant to pay \$100 a week for the support of his dependent child. Now, 10 years later the defendant has a new family, three more children here and in the face of that we receive an order from the other state which they seek to have registered and which they seek to have us enforce.

We feel that the man's present circumstances must be taken into consideration, his present income here, the fact that he has a new family here, the fact that the child is now older than the child was, the fact that where arrearage has accrued for example, that a new action should be commenced to reduce them to a California judgment. We feel that in every reciprocal support case it should be filed anew and that we should not be required to enforce a divorce order that was made some years ago in another state. We are opposed to the entire Part IV for the reasons I've indicated and I welcome any questions on that.

SENATOR GRUNSKY: Yes, Mr. Bohn.

MR. BOHN: In other words, what you're saying is that if you are charged with the responsibility of enforcing these orders you wish to have the opportunity to inquire into all the circumstances as to the defendant's present situation and as to the present situation of the wife who is making the complaint, is that substantially what you're saying?

MR. PRESSMAN: Yes, and thank you for saying it for me in the way I should have said it.

SENATOR GRUNSKY: Are there any other questions of the committee?

MR. RICHTER: May I say just a word on this? I do not think this type of proposal is new, it is a proposal to give a short form procedure for registering and confirming as a judgment of this State a foreign support order. I don't know how recently it has been up before you gentlemen but I do know I've heard it discussed in past years and nothing has ever come out of it so I assume it's not new here. There is, of course, some validity to the arguments that it is a good thing to be able to take a support order and judgment from another state and not have to relitigate the whole thing again in this State when you want to bring it in when the defendant has come into this State. I'm not sure of the procedure here, it does of course provide for notice to the defendant the same as in any other civil case and that he may assert any defense available to him in an action on a foreign judgment, that's the one thing that bothers me as to whether that goes far enough in permitting him to have this court re-examine his existing circumstances—

SENATOR GRUNSKY: Well, can't that always be done. In a petition for a modification of an order now you've got to preserve that right to a defendant under all circumstances and if by any chance by filing this you freeze it into a judgment where it's nothing but a suit on a frozen judgment why that would be grossly unfair.

MR. RICHTER: It would seem to me that any order of course that would be made on this would be subject to modification in the same way that any order originally made in this state would be.

SENATOR GRUNSKY: That is what I am getting at, if that is the case, where is the harm, then you can go in the minute they file this certified copy of the support order then through his attorney he would file an application and go into the circumstances of his lower earnings or new family or whatever it may be and get a modification of it in that respect. I'm not saying that is what it holds, I'm asking this, is that what it does?

MR. BOHN: Pursuant to your question, Senator, I was going to ask if the objection of the district attorney's office here was the fact that this order if modified at all under this proceeding would have to be done in some court somewhere else and not in California. In other words, the defendant would have to go back to the other state somewhere to modify the order first otherwise they would be compelled to enforce it in its present form. Is that the problem?

MR. PRESSMAN: That is correct sir.

MR. RICHTER: I don't think that is correct because as I read Section 38 the support order as confirmed shall have the same effect and may be enforced as if originally entered in the court—

SENATOR GRUNSKY: All right now maybe it might be to the defendant's advantage to have this because if you don't permit it to be filed and proceed here then his only recourse is to go back to Ohio or wherever the original action is but if this is like transferring between counties in the state to bring it in, file it and then the jurisdiction resides in the California court for a motion for modification, if I were

an attorney for a defendant husband I would be happy to have the thing in California where it could all be aired and the thing modified consistent with its present needs.

SENATOR DOLWIG: Along that line, I have a question here. I judge you have the mechanics for the procedure here.

SENATOR GRUNSKY: Well no, an order for support is never a final judgment, is it?

SENATOR DOLWIG: Now if the court order is registered and you have your registry completed, then the question is, what would be the next procedure as far as the prosecuting or the district attorney is concerned? He has to file a petition, doesn't he?

MR. PRESSMAN: Presumably, we would enforce that as though it were our own order that we had obtained here.

SENATOR DOLWIG: That isn't what it says. I think that you have a gap here between 35 and 36, Mr. Richter, and that it doesn't state here that a petition in each case shall be filed. It says a petition for registration shall be verified but it doesn't say that a petition shall be filed. Now as far as your other procedures are concerned in Section 37 I think that provides practically the same procedure that you have under the existing law.

MR. RICHTER: I believe the last sentence of Section 36 goes to your first point, sir. It says the foreign support order is registered upon the filing of the complaint subject only to subsequent order of confirmation.

MR. PRESSMAN: Gentlemen, we would be required then to enforce an order that was made when our defendant, we'll say, had a wife and one child, we would be required to enforce that support order which is sent here from the other state, although the defendant now has a second wife and five children, we have no discretion except to run a levy on his wages as though he only had the original family, which seems manifestly unfair, it seems that the order should be based upon his present circumstances.

SENATOR GRUNSKY: All right, let me interrupt you then to get this thing to a head. Mr. Richter, you're submitting it but you are not recommending it or urging it in any way——

MR. RICHTER: We don't recommend it strongly, but we believe this has merit and that it should be considered carefully before rejecting it. Going through my mind at this point was that this is broader, of course, than the general provisions of the reciprocal enforcement of the support act and is not necessarily applicable only to proceedings which are instituted by the district attorney.

SENATOR GRUNSKY: Well, my feeling is that we would be safe in rejecting it but if we are to adopt it I would want to give a lot further thought to it and perhaps modify and amend it further. It's one of those circumstances, I don't think we want to take a motion today adopting it and we may not want to unequivocally reject it. What is the feeling of the committee?

SENATOR DOLWIG: Mr. Richter, I think you have a drafting problem here too, just for the future.

MR. RICHTER: I was going to suggest that perhaps we ought to refer it to the State Bar for their consideration and see what they would recommend.

SENATOR DOLWIG: I so move.

SENATOR GRUNSKY: All right, then, the motion before the committee is that the subject matter of Part IV, Sections 33 through 38 inclusive be referred to the State Bar for their recommendation and insofar as this committee there is no recommendation on it to the standing committee. All in favor of the motion signify—excuse me, Senator Coombs.

SENATOR COOMBS: Will that recommendation be reported at the coming session?

SENATOR GRUNSKY: Well, if and when they do and if they don't act on it by the coming session for all practical purposes, I presume we'll be deleting it from the proposed draft.

SENATOR COOMBS: All right.

SENATOR GRUNSKY: All in favor of the motion signify by saying "Aye," contrary minded. Motion is carried. All right, thank you.

MR. PRESSMAN: Senator, that suggestion concludes it, except may I say one thing about this reference to the State Bar. I can see where the lawyers who are in private practice would be in favor of that. May I urge that if the State Bar recommends its passage that it be designed to the effect that it would have to be enforced by private counsel and not by district attorneys throughout the State.

SENATOR GRUNSKY: Well the record will so show that. Also the fact that if the Bar Association recommends it doesn't mean that we will adopt it, the mortality of some of their recommendations is very high in this committee. We just want to know how they feel about it.

MR. PRESSMAN: I can tell you, well I'm quite sure that they would feel that it should be passed.

SENATOR GRUNSKY: All right, thank you gentlemen, we appreciate your untiring efforts on behalf of your program.

MR. BOHN: May I ask one further question before these gentlemen leave? There are some technical questions in my mind about this act. Would it be satisfactory with the committee and with you if I were to write to you and ask for answers to those questions prior to the 1959 Session.

MR. PRESSMAN: We would be very happy to do everything we can.

SENATOR GRUNSKY: Thank you, gentlemen.

MR. PRESSMAN: Thank you very much, gentlemen.

MR. RICHTER: We have removed from our program this year at the suggestion of some of the members of the committee, certain items which will probably be ready to come up for final action two years from now. Would it be the suggestion of the committee that we introduce those as bills at this session so that they would be formally referred to the Interim Judiciary Committee.

SENATOR GRUNSKY: In the case of your commission, I don't think it is necessary because we have a program of liaison between the two where I don't think it's necessary to have the formality of a bill introduced, however, what is your suggestion Mr. Bohn?

MR. BOHN: Well, the only thought, Senator, in addition to that would be that by those bills are being introduced we will have letters and correspondence from all groups that might be interested, at least

we will have an official record that some of these people are or are not interested and we can acquire a mailing list.

SENATOR GRUNSKY: All right, I understand, that is similar to the previous situation then. Under those circumstances, let's follow that for the purpose of disseminating the bills and getting the public notified. But you do understand that as far as our committee and your commission we're going to be working hand and glove throughout, but for the purpose of public information and knowledge we will follow this procedure.

MR. RICHTER: What I had in mind specifically were two very large items. Number 1, is the Uniform Commercial Code as a whole, not just Article 9, and the other is the Uniform Rules of Evidence which are presently —

SENATOR GRUNSKY: Let's have this understanding then, this is important. . . . If you introduce those bills we will have the understanding we are not going to take two or three days of our time in Sacramento, it will simply be done for the procedural purpose of getting the bills in print and our report will show that when they are introduced without hearing they will be referred to the interim committee for study, so it is simply to get it before the public, not with the idea that we are going to spend two or three days in Sacramento on it next session. Do we have that understanding?

MR. RICHTER: Yes, we have no intention of trying to put this into passage.

SENATOR GRUNSKY: All right, thank you. Then you understand, John.

MR. BOHN: Yes.

D. EMINENT DOMAIN

1. INTRODUCTION

The following bills relating to the subject of eminent domain were specifically referred to the committee for interim study:

S.B. 730—Inclusion of attorney's and appraisal witness' fees in certain state proceedings.

S.B. 1057—Provision for removal of personal property from premises condemned.

S.B. 1823—Damages to be assessed in condemnation proceedings.

S.B. 2530—Burden of proof on plaintiff to establish public necessity.

S.B. 2532—Costs and expenses in condemnation proceedings. State to serve offer on defendant 15 days before trial.

S.B. 2534—Appraisal records, etc., of Department of Public Works to be public records.

A.B. 1878—Payments of condemnation awards. Bonded indebtedness.

The full committee assigned the subject to the Subcommittee on Real Estate and Probate for consideration and for future report back to the full committee.

At a meeting of the subcommittee on March 20, 1958, committee counsel reviewed the bills, pointing out that there were other bills involving the same subject which had been considered by the Standing Judiciary Committee at the 1957 Session, some of which had been passed by the Legislature, but vetoed by the Governor. He was thereupon instructed to prepare and submit a complete report as to all bills considered together with a statement of the action taken on each.

The subcommittee considered the following bills and made recommendations as to each:

S.B. 2530

This bill, set forth on page 255 of the Fourth Progress Report, proposes to add Section 1256.3 to the Code of Civil Procedure, to provide, in substance, that notwithstanding any other provisions of law, the public necessity of a proposed taking under eminent domain must be established at the trial and the plaintiff has the burden of proof to so establish it. The subcommittee noted that statutes creating the right of eminent domain usually provide that the board or commission responsible for the taking may by resolution conclusively establish the public necessity thereof and was of the opinion that bills such as S.B. 2530, changing this rule would have little chance of passage. It was further felt that the passage of such a bill might be contrary to the public welfare in that it would unduly delay highway and other programs by requiring the public need of the entire program or large portions of it to be proven in each individual taking.

Accordingly, the subcommittee determined, upon motion duly made, seconded and carried, that the following recommendation should be made to the full committee at its next meeting:

"That the substance of S.B. 2530 is undesirable and that any proposal of similar import at the 1959 Legislative Session be tabled."

S.B. 2532

This bill, set forth on pages 249-250 of the Fourth Progress Report, proposes to amend Section 1255 of the Code of Civil Procedure to provide that the State in every eminent domain proceeding must serve on the defendant a final written offer at least fifteen (15) days before trial, which defendant may accept within ten (10) days thereafter.

The subcommittee determined, upon motion duly made, seconded and carried, that the following recommendation should be made to the main committee:

"That the substance of this legislation is desirable and that an attempt should be made to draft an acceptable bill, taking into consideration the suggestion of Senator Coombs that in preparing such a bill that the 10 days in line 10, page 1, be changed to 20 days."

S.B. 2534

This bill, set forth on page 537 of the Fourth Progress Report, proposes to add Section 104a to the Streets and Highways Code to make public all records of the Department of Public Works pertaining to condemnation proceedings and to make them available for inspection by an owner of real property which the State seeks to condemn, his attorney or any defendant in such proceedings.

The subcommittee determined, upon motion duly made, seconded and carried, that the following recommendation should be made to the main committee:

"That the subject matter of this bill might be desirable and that further study and investigation should be made."

A.B. 1878

This bill, set forth on page 245 of the Fourth Progress Report, proposes to amend Section 1252 of the Code of Civil Procedure to provide that in condemnation matters the amount of any bonded indebtedness which is a direct lien on the property may be withheld from the defendant by the court, and paid directly to the public agency involved or deposited in the court for the public agency.

The subcommittee determined, upon motion duly made, seconded and carried, that the following recommendation should be made to the main committee:

"That the subject matter of this bill might be desirable and that further study and investigation should be made."

The subcommittee determined that as to all the bills above mentioned, except S.B. 2530, committee counsel present a report, including therein the bills which had been passed by the Legislature but pocket-vetoed by the Governor.

It was further suggested that a hearing be scheduled for May 5, 1958, and that all interested agencies and persons be notified in order that a complete hearing might be held.

2. FURTHER CONSIDERATION OF PROPOSALS BY SUBCOMMITTEE

A hearing was scheduled for May 5, 1958, at the State Capitol, Sacramento. A complete report of those attending and the bills considered is set forth as follows:

Present:

Senator Richard J. Dolwig, Chairman, Subcommittee on Real Estate and Probate

Senator James E. Busch

Senator Nathan F. Coombs

Senator Earl D. Desmond

John A. Bohn, Committee Counsel

Witnesses:

Emerson W. Rhyner, attorney, Division of Public Works

Albert Day, attorney, Hill, Farrer & Burrill, Los Angeles

John McDonough, attorney, California Law Revision Commission

John H. Larson, attorney, County Counsel's Office, Los Angeles

a. BILLS CONSIDERED

The hearing was devoted almost entirely to the subject of eminent domain.

The bills discussed are briefly indexed herein by bill number and code section so as to permit easy reference to the report of the hearing that follows.

Civil Procedure

| <i>Bill number</i> | <i>Code section</i> | <i>Effect</i> |
|--------------------|---------------------|---------------|
| S.B. 1057----- | 1238.5 | Am |
| S.B. 2533*----- | 1243.5 | Ad |
| S.B. 2537*----- | 1247b | Ad |
| S.B. 2531*----- | 1250a | Ad |
| S.B. 2532----- | 1255 | Am |
| S.B. 2538*----- | 1255b | Ad |
| S.B. 730----- | 1255.5 | Ad |
| S.B. 2530----- | 1256.3 | Ad |

Streets and Highways

| | | |
|----------------|------|----|
| S.B. 2534----- | 104a | Ad |
|----------------|------|----|

* Bills vetoed by Governor at 1957 Session.

AMENDED IN SENATE MARCH 20, 1957

SENATE BILL

No. 1057

Introduced by ~~Senator~~ *Senators Cunningham and Short*

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section ~~1238.5~~ 1248 of the Code of Civil Procedure, relating to eminent domain.

The people of the State of California do enact as follows:

1 ~~SECTION 1.~~ Section 1238.5 of the Code of Civil Procedure
2 is amended to read:

3 ~~1238.5.~~ Irrigation is a public use in behalf of which the
4 right of eminent domain may be exercised pursuant to the
5 provision of this title:

6 ~~SECTION 1.~~ Section 1248 of the Code of Civil Procedure
7 is amended to read:

8 1248. The court, jury, or referee must hear such legal testi-
9 mony as may be offered by any of the parties to the proceed-
10 ings, and thereupon must ascertain and assess:

11 1. The value of the property sought to be condemned, and
12 all improvements thereon pertaining to the realty, and of each
13 and every separate estate or interest therein; if it consists of
14 different parcels, the value of each parcel and each estate or
15 interest therein shall be separately assessed;

16 2. If the property sought to be condemned constitutes only
17 a part of a larger parcel, the damages which will accrue to
18 the portion not sought to be condemned, by reason of its
19 severance from the portion sought to be condemned, and the
20 construction of the improvement in the manner proposed by
21 the plaintiff;

22 3. Separately, how much the portion not sought to be con-
23 demned, and each estate or interest therein, will be benefited,
24 if at all, by the construction of the improvement proposed by
25 the plaintiffs; and if the benefit shall be equal to the damages
26 assessed under subdivision 2, the owner of the parcel shall be

1 allowed no compensation except the value of the portion taken ;
2 but if the benefit shall be less than the damages so assessed,
3 the former shall be deducted from the latter, and the re-
4 mainder shall be the only damages allowed in addition to the
5 value ;

6 4. If the property sought to be condemned be water or the
7 use of water, belonging to riparian owners, or appurtenant to
8 any lands, how much the lands of the riparian owner, or the
9 lands to which the property sought to be condemned is appur-
10 tenant, will be benefited, if at all, by a diversion of water from
11 its natural course, by the construction and maintenance, by
12 the person or corporation in whose favor the right if eminent
13 domain is exercised, of works for the distribution and con-
14 venient delivery of water upon said lands ; and such benefit,
15 if any, shall be deducted from any damages awarded the owner
16 of such property ;

17 5. If the property sought to be condemned be for a railroad,
18 the cost of good and sufficient fences, along the line of such
19 railroad, and the cost of cattle-guards, where fences may cross
20 the line of such railroad ; and such court, jury or referee shall
21 also determine the necessity for and designate the number,
22 place and manner of making such farm or private crossings
23 as are reasonably necessary or proper to connect the parcels
24 of land severed by the easement condemned, or for ingress to
25 or egress from the lands remaining after the taking of the part
26 thereof sought to be condemned, and shall ascertain and assess
27 the cost of the construction and maintenance of such crossings ;

28 6. If the removal, alteration or relocation of structures or
29 improvements is sought, the cost of such removal, alteration
30 or relocation and the damages, if any, which will accrue by
31 reason thereof ;. *If the removal of personal property from*
32 *the premises condemned is made necessary by such condemna-*
33 *tion, the court, jury, or referee shall also ascertain and assess*
34 *the cost of removal of such property and its relocation at a*
35 *location of the same character as its former location, including*
36 *transportation costs within a 25-mile area, and physical damage*
37 *to such property in moving and relocating, but not including*
38 *loss of profits, goodwill, or any costs or damages compensated*
39 *for under any other provision of this section ;*

40 7. As far as practicable, compensation must be assessed for
41 each source of damages separately.

42 8. When the property sought to be taken is encumbered by
43 a mortgage or other lien, and the indebtedness secured thereby
44 is not due at the time of the entry of the judgment, the amount
45 of such indebtedness may be, at the option of the plaintiff,
46 deducted from the judgment, and the lien of the mortgage
47 or other lien shall be continued until such indebtedness is paid.

SENATE BILL

No. 2533

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 1243.5 to the Code of Civil Procedure, relating to deposit of security by the State before taking immediate possession of property sought to be condemned.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1243.5 is added to the Code of Civil
2 Procedure, to read:
3 1243.5. Whenever, pursuant to Section 14 of Article I of
4 the California Constitution the State deposits money as se-
5 curity for the taking of immediate possession of property
6 sought to be condemned, such money shall be deposited by the
7 county in a special interest-bearing bank account, with interest
8 payable to the State.

Senate Bill No. 2533 was amended in the Senate on May 22. As finally passed the bill read as follows:

CHAPTER-----

An act to amend Section 1254 of, and to add Section 1254.5 to the Code of Civil Procedure, relating to the deposit and investment of money paid into court.

The people of the State of California do enact as follows:

SECTION 1. Section 1254 of the Code of Civil Procedure is amended to read:

1254. At any time after trial and judgment entered or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into court, for the defendant, the full amount of the judgment, and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceeding, as well as all damages that may be sustained by the defendant, if, for any cause, the property shall not be finally taken for public use, the superior court in which the pro-

ceeding was tried may, upon notice of not less than 10 days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof. In an action for condemnation of property for the use of a school district, an order so authorizing possession or continuation of possession by such school district is not appealable. The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court, or a judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. In ascertaining the amount to be paid into court, the court shall take care that the same be sufficient and adequate. The payment of the money into court, as hereinbefore provided for, shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain, as to all accidents, defalcations, or other contingencies (as between the parties to the proceedings), at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination, and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by rule of court to take it. If, for any reason, the money shall at any time be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally brought to an end, and until paid over or made payable to the defendant by order of court, as above provided. The court shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If the court orders deposit in the State Treasury, it shall be the duty of the State Treasurer to receive all such moneys, duly receipt for, and to safely keep the same in the Condemnation Deposits Fund, which fund is hereby created in the State Treasury and for such duty he shall be liable to the plaintiff upon his official bond. Money in the Condemnation Deposits Fund may be invested and reinvested in any securities described in Sections

1430, 16431 and 16432, Government Code, or deposited in banks as provided in Chapter 4 of Part 2 of Division 4 of Title 2, Government Code. The Pooled Money Investment Board shall designate at least once a month the amount of money available in the fund for investment in securities or deposit in bank accounts, and the type of investment or deposit and shall so arrange the investment or deposit program that funds will be available for the immediate payment of any court order or decree. Immediately after such designation the Treasurer shall invest or make deposits in bank accounts in accordance with the designations.

For the purposes of this section, a written determination signed by a majority of the members of the Pooled Money Investment Board shall be deemed to be the determination of the board. Members may authorize deputies to act for them for the purpose of making determinations under this section.

Interest earned and other increment derived from investments or deposits made pursuant to this section, after deposit of money in the State Treasury, shall be deposited in the Condemnation Deposits Fund. After first deducting therefrom expenses incurred by the Treasurer in taking and making delivery of bonds or other securities under this section, the State Controller shall apportion as of June 30th and December 31st of each year the remainder of such interest earned or increment derived and deposited in the fund during the six calendar months ending with such dates. There shall be apportioned and paid to each plaintiff having a deposit in the fund during the six-month period for which an apportionment is made, an amount directly proportionate to the total deposits in the fund and the length of time such deposits remained therein. The State Treasurer shall pay out the money deposited by a plaintiff in such manner and at such times as the court or a judge thereof may, by order or decree, direct. In all cases where a new trial has been granted upon the application of the defendant, and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

SEC. 2. Section 1254.5 is added to said code, to read:

1254.5. When money is paid into court as provided by Section 14 of Article I of the Constitution, the court shall order the money to be deposited in the State Treasury, unless the plaintiff requests the court to order deposit in the county treasury, in which case the court shall order deposit in the county treasury. If money is deposited in the State Treasury pursuant to this section it shall be held, invested, deposited, and disbursed in the manner specified in Section 1254, and interest earned or other increment derived from its investment shall be apportioned and disbursed in the manner specified in that section.

This bill was pocket-vetoed by the Governor. The press release on the veto reads as follows: "Conflicts with Chapter 1851, Statutes of 1957."

SENATE BILL

No. 2537

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Section 1247b to the Code of Civil Procedure,
relating to evidence in eminent domain proceedings.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1247b is added to the Code of Civil Pro-
2 cedure, to read:
3 1247b. If the plaintiff in a condemnation proceeding is the
4 State of California, such plaintiff shall be precluded from in-
5 troducing into evidence any map, plat, or diagram without
6 proof of having served a copy of such map, plat, or diagram
7 upon the defendant or his attorney at least five days prior
8 to the time of trial.

This bill was amended in the Senate on May 21. As finally passed the bill read as follows:

CHAPTER-----

*An act to add Section 1247b to the Code of Civil Procedure,
relating to evidence in eminent domain proceedings.*

The people of the State of California do enact as follows:

SECTION 1. Section 1247b is added to the Code of Civil Procedure, to read:

1247b. Whenever in a condemnation proceeding only a portion of a parcel of property is sought to be taken, the plaintiff shall prepare a map showing the boundaries of the entire parcel, indicating thereon the part to be taken, the part remaining, and the improvement to be constructed on the part taken in its relationship to the remaining property, and shall serve an exact copy of such map on the defendant or his attorney at least fifteen (15) days prior to the time of trial.

Senate Bill No. 2537 was pocket-vetoed by the Governor. The press release on the veto reads as follows: "Unwarranted complication of procedure."

SENATE BILL

No. 1823

Introduced by Senator Cobey

January 23, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 1248 of the Code of Civil Procedure, relating to damage to be assessed in condemnation proceedings.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1248 of the Code of Civil Procedure is
2 amended to read:

3 1248. The court, jury, or referee must hear such legal testi-
4 mony as may be offered by any of the parties to the proceed-
5 ings, and thereupon must ascertain and assess:

6 1. The value of the property sought to be condemned, and
7 all improvements thereon pertaining to the realty, and of each
8 and every separate estate or interest therein; if it consists of
9 different parcels, the value of each parcel and each estate or
10 interest therein shall be separately assessed;

11 2. If the property sought to be condemned constitutes only
12 a part of a larger parcel, the damages which will accrue to the
13 portion not sought to be condemned, by reason of its severance
14 from the portion sought to be condemned, *including reduced*
15 *accessibility*, and the construction of the improvement in the
16 manner proposed by the plaintiff;

17 3. Separately, how much the portion not sought to be con-
18 demned, and each estate or interest therein, will be benefited, if
19 at all, by the construction of the improvement proposed by the
20 plaintiffs; and if the benefit shall be equal to the damages
21 assessed under subdivision 2, the owner of the parcel shall be
22 allowed no compensation except the value of the portion taken;
23 but if the benefit shall be less than the damages so assessed, the
24 former shall be deducted from the latter, and the remainder
25 shall be the only damages allowed in addition to the value;

26 4. If the property sought to be condemned be water or the
27 use of water, belonging to riparian owners, or appurtenant to

1 any lands, how much the lands of the riparian owner, or the
2 lands to which the property sought to be condemned is appur-
3 tenant, will be benefited, if at all, by a diversion of water from
4 its natural course, by the construction and maintenance, by the
5 person or corporation in whose favor the right of eminent
6 domain is exercised, of works for the distribution and con-
7 venient delivery of water upon said lands; and such benefit, if
8 any, shall be deducted from any damages awarded the owner
9 of such property;

10 5. If the property sought to be condemned be for a railroad,
11 the cost of good and sufficient fences, along the line of such
12 railroad, and the cost of cattle-guards, where fences may cross
13 the line of such railroad; and such court, jury or referee shall
14 also determine the necessity for and designate the number,
15 place and manner of making such farm or private crossings as
16 are reasonably necessary or proper to connect the parcels of
17 land severed by the easement condemned, or for ingress to or
18 egress from the lands remaining after the taking of the part
19 thereof sought to be condemned, and shall ascertain and assess
20 the cost of the construction and maintenance of such crossings;

21 6. If the removal, alteration or relocation of structures or
22 improvements is sought, the cost of such removal, alteration or
23 relocation and the damages, if any, which will accrue by reason
24 thereof;

25 7. As far as practicable, compensation must be assessed for
26 each source of damages separately.

27 8. When the property sought to be taken is encumbered by a
28 mortgage or other lien, and the indebtedness secured thereby is
29 not due at the time of the entry of the judgment, the amount of
30 such indebtedness may be, at the option of the plaintiff, de-
31 ducted from the judgment, and the lien of the mortgage or
32 other lien shall be continued until such indebtedness is paid.

SENATE BILL

No. 2531

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Section 1250a to the Code of Civil Procedure,
relating to eminent domain.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1250a is added to the Code of Civil
2 Procedure, to read:
3 1250a. If the plaintiff in any eminent domain proceeding
4 is the State of California, or any agency of the State, then
5 the amount of all offers for purchase of the property either
6 before or after commencement of litigation shall be made in
7 writing to the landowner and such written offer or offers must
8 itemize the various elements such as land, improvements or
9 other damage that do comprise the total amount of such offer
10 or offers, and all offers must be dated and signed by an em-
11 ployee of the State or its agency seeking condemnation of the
12 property, and in no event shall such offers be signed or pre-
13 sented to the landowner by an attorney at law who is repre-
14 senting the State or its agency condemning the real property.

Senate Bill No. 2531 was amended in the Senate on May 22. Comments and questions of the Counsel to the Senate Committee on Judiciary on the amended bill were as follows:

This bill proposes to add Section 1250a to the Code of Civil Procedure to provide that when the State attempts to purchase real property in lieu of condemning it, the amount of all offers for purchase, either before or after commencement of litigation shall be made in writing to the landowner. The written offer must itemize the various elements of damage that comprise the total of such offer or offers, and all offers must be dated and signed by an employee of the offeror seeking condemnation of the property and not by the attorney representing the State.

Query: Section 1250, C.C.P., relates to defective title and Section 1249, C.C.P., relates to compensation. Should the proposed addition to the code be renumbered 1249a?

This bill was further amended in the Assembly on June 11th. As finally passed it read as follows:

CHAPTER-----

*An act to add Section 1250a to the Code of Civil Procedure,
relating to eminent domain.*

The people of the State of California do enact as follows:

SECTION 1. Section 1250a is added to the Code of Civil Procedure, to read:

1250a. In any case in which a public or private entity possessing the power of eminent domain attempts to purchase real property in lieu of condemning it, the amount of all offers for purchase of the property either before or after commencement of litigation in any condemnation proceeding shall be made in writing to the landowner and such written offer or offers must itemize the various elements of damage that do comprise the total amount of such offer or offers, and all offers must be dated and signed by an employee of the offeror seeking condemnation of the property. Such offers are not admissions and shall not be admissible in evidence in any condemnation proceeding involving the property to which they relate.

Senate Bill No. 2531 was pocket-vetoed by the Governor. The press release on the veto reads as follows: "Unwarranted complication of procedure."

ASSEMBLY BILL

No. 1878

Introduced by Mr. Brown

January 19, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Section 1252 of the Code of Civil Procedure,
relating to payment of condemnation awards.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1252 of the Code of Civil Procedure is
2 amended to read:
3 1252. *Except for the amount of any bonded indebtedness*
4 *against the land arising from the issuance of bonds by a public*
5 *agency, payment may be made to the defendants entitled*
6 *thereto, or the money may be deposited in court for the de-*
7 *fendants, and be distributed to those entitled thereto. The*
8 *amount of any such bonded indebtedness shall be paid to such*
9 *public agency or be deposited in court and distributed by the*
10 *court to such public agency. If the money be not so paid or*
11 *deposited, the defendants and such public agency may have*
12 *execution as in civil cases; and if the money cannot be made*
13 *on execution, the court, upon a showing to that effect, must*
14 *set aside and annul the entire proceedings, and restore pos-*
15 *session of the property to the defendant, if possession has been*
16 *taken by the plaintiff.*

Assembly Bill No. 1878 was amended in the Assembly on April 17th. Comments of Counsel to the Senate Committee on Judiciary on the bill as amended were as follows:

This bill provides that in condemnation matters the amount of any bonded indebtedness which is a *direct lien* on the property may be withheld from the defendant by the court, and the amount of such bonded indebtedness paid directly to the public agency involved or deposited in the court and distributed by the court to the public agency.

It was the recommendation of the Senate Committee on Judiciary that Assembly Bill No. 1878 be referred to an interim committee for study.

SENATE BILL

No. 729

Introduced by Senators Dolwig, Cobey, Dorsey, and Farr

January 17, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 1254.5 to the Code of Civil Procedure, relating to eminent domain.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1254.5 is added to the Code of Civil
2 Procedure, to read:
3 1254.5. At any time after money has been deposited as
4 security as provided in Section 14 of Article I of the Constitu-
5 tion for the condemnation of any property or interest in
6 property for state highway purposes, upon application of the
7 party whose property or interest in property is being taken,
8 the court shall order from the money deposited in connection
9 with such property or interest an amount equal to 75 percent
10 of the amount deposited for the respective property or interest
11 to be paid to such party. The receipt of any such money shall
12 constitute a waiver by operation of law to all defenses in
13 favor of the person receiving such payment except with respect
14 to the ascertainment of the value of the property or interest
15 in the manner provided by law, and title to the property or
16 interest as to which money is received pursuant to this section
17 shall vest in the State as of the time of such payment. Any
18 amount so paid to any party shall be credited upon any judg-
19 ment providing for payment to such party and shall be consid-
20 ered payment upon the judgment as of the date the with-
21 drawal is made so that no interest shall be payable upon the
22 amount so withdrawn after the date of its withdrawal. Any
23 amount withdrawn by any party in excess of the amount to
24 which he is entitled as finally determined in the condemnation
25 proceeding shall be returned to the party who deposited it,
26 and the court in which the condemnation proceeding is pend-
27 ing shall enter judgment therefor against the defendant.

Comments of Counsel to the Senate Committee on Judiciary on the bill as introduced were as follows:

This bill proposes to add a new section to the Code of Civil Procedure dealing with condemnation proceedings.

SENATE BILL

No. 2532

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Section 1255 of the Code of Civil Procedure,
relating to costs and expenses in condemnation proceedings.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 1255 of the Code of Civil Procedure is
2 amended to read:

3 1255. *If the plaintiff in a condemnation proceeding is the*
4 *State of California, such plaintiff must not later than 15 days*
5 *before the time set for trial serve on the defendant and if the*
6 *defendant is represented by an attorney, upon such attorney,*
7 *a written offer to allow judgment to be taken by and for the*
8 *defendant and against the plaintiff for the sum specified therein.*
9 *If the defendant accepts the offer and give notice thereof to*
10 *plaintiff within 10 days after receipt thereof, he may file the*
11 *offer together with proof of notice of acceptance and the clerk*
12 *must thereupon enter judgment accordingly. If the notice of*
13 *acceptance be not given within the time specified, the offer*
14 *is to be deemed withdrawn and cannot be given in evidence*
15 *upon the trial and if the defendant obtains an award by ver-*
16 *dict or judgment as the result of a trial, which award is greater*
17 *than the amount offered by the plaintiff, the plaintiff must pay*
18 *the defendant's costs including reasonable expert witness fees*
19 *and reasonable attorneys fees to be determined in the following*
20 *manner: The defendant may within five days after the verdict*
21 *is recorded or within five days after the entry of judgment,*
22 *make a motion for an order fixing reasonable expert witness*
23 *fees for such witnesses as were called by defendant and reason-*
24 *able attorneys fees. After the order the costs, expert witness*
25 *fees and attorneys fees so fixed may be claimed in and be a*
26 *cost bill to be prepared, served, filed and taxed as in other*
27 *civil actions; provided, however, that the time within which*
28 *such cost bill must be filed shall be extended until five days*
29 *after the making of the order fixing expert witness fees and*

1 attorneys fees. Should the plaintiff fail to serve the written
2 offer as herein provided for, the defendant shall be entitled to
3 a continuance of the trial until at least 15 days after the serv-
4 ice of the offer. In other cases, costs may be allowed or not, and
5 if allowed, may be apportioned between the parties on the same
6 or adverse sides, in the discretion of the court.

SENATE BILL

No. 2538

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 1255b to the Code of Civil Procedure, relating to eminent domain and the allowance of interest after an order be made letting the plaintiff into possession.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1255b is added to the Code of Civil Pro-
2 cedure, to read:
3 1255b. If the plaintiff in a condemnation proceeding is the
4 State of California, and the plaintiff obtains an order from
5 the court for possession of the property sought to be con-
6 demned prior to the trial of the action, then the compensation
7 and damages awarded shall draw lawful interest from the date
8 of said order.

This bill was amended in the Senate on May 22d. As finally passed it read as follows:

CHAPTER-----

An act to add Section 1255b to the Code of Civil Procedure, relating to eminent domain and the allowance of interest after an order be made letting the plaintiff into possession.

The people of the State of California do enact as follows:

SECTION 1. Section 1255b is added to the Code of Civil Procedure, to read:

1255b. If the plaintiff in a condemnation proceeding obtains an order from the court for possession of the property sought to be condemned prior to the trial of the action, then the compensation and damages awarded shall draw lawful interest from the date of said order.

Senate Bill No. 2538 was pocket-vetoed by the Governor. The press release on the veto stated: "Present law adequate in providing for payment of interest from actual date of possession."

AMENDED IN SENATE MAY 21, 1957

SENATE BILL

No. 730

Introduced by Senators Dolwig, Cobey, and Dorsey

January 17, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Section 1255.5 to the Code of Civil Procedure,
relating to eminent domain.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1255.5 is added to the Code of Civil
2 Procedure, immediately to follow Section 1255 of said code,
3 and to read:
4 1255.5. Notwithstanding Section 1255 costs in connection
5 with any proceeding in the superior court for the condemna-
6 tion of real property for state highway purposes shall be al-
7 lowed if the amount awarded for the taking of the property
8 or any interest therein is more than the amount last offered
9 *in writing* by the Department of Public Works immediately
10 prior to the actual commencement of the trial of the proceed-
11 ing. Such costs, to be fixed by the court, shall include the
12 reasonable and necessary fees of attorneys and appraisal wit-
13 nesses incurred by the owner of the property or interest con-
14 demned.

SENATE BILL

No. 2530

Introduced by Senator Desmond

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to add Section 1256.3 to the Code of Civil Procedure,
relating to eminent domain.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1256.3 is added to the Code of Civil
2 Procedure, to read:
3 1256.3. Notwithstanding any provision of law declaring
4 that a resolution by any state department, board, or agency is
5 conclusive evidence of the public necessity of the proposed
6 improvement for which property is being condemned, the
7 plaintiff shall have the burden of proof to establish such public
8 necessity by evidence other than the resolution and the plaintiff
9 shall have the burden to establish such public necessity in the
10 same manner as any other issue before a court or jury in a
11 civil proceeding in eminent domain.

SENATE BILL

No. 2534

Introduced by Senator DesmondJanuary 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 104a to the Streets and Highways Code, relating to appraisals, maps, records, data and correspondence of the Department of Public Works, relative to the condemnation of real property as public records.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 104a is added to the Streets and High-
2 ways Code, to read:
3 104a. All records of the Department of Public Works, Divi-
4 sion of Highways, including all maps, drawings, right of way
5 appraisals, documents, correspondence, reports, resolutions
6 pertaining to all condemnation proceedings, shall be public
7 writings and records as defined by Section 1888 of the Code of
8 Civil Procedure and shall not be confidential in character, and
9 such documents shall be available for inspection upon the
10 request of the owner of any real property which the State
11 seeks to condemn, or upon the request of any defendant or his
12 attorney in a condemnation proceeding.

b. PROCEEDINGS AT HEARING

Meeting: Room 3191, 10 a.m., May 5, 1958, State Capitol.

Present: Senator Richard J. Dolwig, Chairman.

Senator James E. Busch.

Senator Nathan F. Coombs.

Senator Earl D. Desmond.

John A. Bohn, Committee Counsel.

Presiding: Senator Richard J. Dolwig, Chairman.

MR. BOHN: As you recall, Mr. Chairman, the subcommittee met briefly some time ago to consider all of the bills that were referred to the Judiciary Committee at the 1957 Session of the Legislature plus those bills which had been passed by the Legislature but vetoed by the

Governor. Starting on page 3 of the outline, which you have before you, is a list of all of the bills which were under consideration and which as I understand it, are to be considered and a brief statement of what each bill seeks to do. Now all of those bills except three of them, which are noted, will be found in the Fourth Progress Report of the Judiciary Committee and the pages at which the bill will be found are cited in the outline which you have before you. The first bill is S.B. 2531. The text of that bill will be found on page 243 of the report.

CHAIRMAN: Pardon me, John, may I interrupt for just a minute? I would like to know who was notified as to the meeting on these eminent domain. I notice we have here a representative from the Los Angeles County Counsel's office. Were the League of California Cities and county supervisors informed of this meeting?

MR. BOHN: No, neither the league nor the board of supervisors were informed of this meeting for two reasons. First of all, time was a little short but primarily, we ascertained that the California Law Revision Commission is undertaking a thorough study of the entire field and therefore I thought the committee might wish to hear as to how far their studies have gone before calling a full scale hearing to say yes or no on a whole series of bills. But the county counsel's office of Los Angeles who have always indicated an interest in these matters have been notified. Everybody in our file who had indicated an interest at the 1957 Session—there were very few—I think just two or three firms were notified. The Department of Public Works were notified and we have here in addition to the executive secretary of the Law Revision Commission, a representative of the firm that is engaging in the study for them. It is a private firm in Los Angeles. I thought you might want to pick and choose some of these bills before a final hearing on them.

CHAIRMAN: Proceed, John.

MR. BOHN: The first three bills which are mentioned on page 3, S.B. 2531, S.B. 2533, and S.B. 2537, were all vetoed by the Governor. The same thing is true of S.B. 2538. By way of disposing of one of those bills I gather that an identical bill, an Assembly bill, had also been passed and was signed into law prior to this bill getting to the Governor's desk. Therefore, unless for some reason the committee wishes to specially consider S.B. 2533 it is my suggestion that it be dropped from the agenda since the absolutely identical language is now law.

CHAIRMAN: Is there any objection to dropping 2533 from the agenda?

SENATOR BUSCH: It is so moved, Mr. Chairman.

CHAIRMAN: It has been moved that 2533 be removed from the agenda. All those in favor say "Aye." Unanimous. Contrary—none. 2533 will not be considered any further by the committee.

MR. BOHN: Now then, turning for a moment from those three bills left on the agenda which were vetoed by the Governor, the next series of bills also found starting on page 3 were not passed by the Legislature for various reasons. They were not passed out of the Senate Judiciary for various reasons. We've divided that category of bills into two sub-headings. One, bills which this subcommittee has already discussed and

upon which you have directed certain action to be taken. Now that is starting with S.B. 730, S.B. 1057, S.B. 1823, S.B. 2530, S.B. 2532, S.B. 2534 and A.B. 1878 and as to those we have a brief report but not a comprehensive report at this time. I'm sure we'll hear from these experts on the general subject matter but basically the chairman asked me to look into the general state of the law insofar as allowances for personal property compensation for personal property is concerned and we have done so. Particularly I think the committee had in mind what was the situation in Canada and what was the situation with regard to some recent cases.

We found, from a brief survey of the law that in the few Canadian cases that were available to us apparently the law there permits compensation for the removal of personal property, under a whole series of circumstances. As far as the law in this country is concerned, there apparently is a distinction and it is not quite clear in my mind—perhaps the experts can clear it up—there apparently is a distinction as to cases where you are dealing with the owner whose property is being taken and a series of cases where you are dealing with the situation where there is a tenant involved. Now as to the owner, the general rule seems to be pretty well that if they're not fixtures in the technical sense of the word, then no compensation is allowed, and in testing what is a fixture and what is not a fixture apparently they use the same test as that between vendor and vendee in the other fixture cases.

Insofar as the tenant cases are concerned, the weight of authority seems to be that no compensation is allowed for removal of personal property but there are a series of cases, and a few cases by statute, and in other cases by judicial legislation where compensation is allowed for personal property under those situations. Now we will be glad to send to the committee the few cases that we have found on the subject. There's a half dozen of them and I think two or three are states involved. The more recent cases seem to permit compensation of one sort or another for the cost of removal of personal property even though it may not technically be a fixture under the law. I presume that that is in part true because of the more liberal view concerned.

In any event, that seems to be the general state of the law at this time and as the committee recalls, at that last session the Legislature passed out, and it was signed into law, a bill which permits compensation insofar as industrial equipment is concerned (C.C.P. 1248b—A.B. 222) but it is my recollection of the discussion at the time that while the committee was willing at that time to go so far as industrial equipment was concerned, they didn't feel that they wanted to go the whole way without more study as to just how you could compensate for these other items of personal property. That, generally, is the survey as to how far we've gone on that particular phase of the situation. I note, however, from the agenda of the Law Revision Commission, which is an extremely comprehensive one that among other things it is, I presume, going to be comprehensively reported on by their experts to the Legislature and I gather they will tell us when that report will be available.

CHAIRMAN: Before you go on, are there any questions by any members of the committee on this particular series of bills which is the "A" series?

SENATOR COOMBS: I'd like to have them go more into detail into lessee's present status under the law. I haven't tried any condemnation cases since I came into the Legislature 10 years ago but in the old days when I was in practice, I used to try them every so often and my impression is that the lessee particularly of a large ranch that has cattle and other equipment and crops, etc., are just out of luck under the law. The best we could get out of it would be the worst of it and I think the law should be changed to protect him.

CHAIRMAN: Mr. Bohn, we're going to go into this thoroughly, aren't we?

MR. BOHN: In detail, yes. I just wanted to give a general survey. But that is my understanding of the present California law. The other cases I was talking about are not in California.

CHAIRMAN: Then we can go on to the Series B.

MR. BOHN: There are other elements involved in the Series A which I take it will be taken up in detail with these witnesses? Now the B series are bills which for some reason or another were not previously taken up at the former subcommittee meeting. It was undoubtedly my fault for not having brought them to your attention. They were bills which I think were not officially referred to the Judiciary Committee for action by the Rules Committee, but were bills of some interest which we for one reason or another either wanted to postpone the consideration of, or which involved the general field. One of them is a spot bill which I'm certain could be quickly disposed of, and that is SB 2640. You'll find a copy of SB 2640 attached to the outline and all that says is that Section 1246.1 of the CCP is repealed and that, of course, is a statute regarding apportionment of damages between co-owners and there were several ideas as to how that could be improved and it is my understanding that this particular bill is a spot bill which never went beyond that stage.

CHAIRMAN: Then we can remove that from our consideration. Since it is a spot bill we have no idea what the author intended.

MR. BOHN: I think he wanted the whole field studied. Senator Cobey as a matter of fact, is the one who originally sponsored the reference of this entire matter to the Law Revision Commission and this was just one of the ideas that he wanted to have thoroughly gone into.

CHAIRMAN: Do you know whether there is any problem relative to the apportionment of damages among co-owners?

MR. BOHN: I gather there is, but I don't know what it is.

CHAIRMAN: Well, maybe we ought to keep it on the agenda.

MR. BOHN: Mr. Chairman, may I ask Mr. McDonough whether that is one of the items on the agenda of the commission?

MR. McDONOUGH: I do not know that specifically, but maybe Mr. Day—may I introduce Mr. Day at this point?

CHAIRMAN: Will you gentlemen please come forward. This meeting is being recorded.

MR. BOHN: That is right. We are.

MR. McDONOUGH: I'm John McDonough of the Law Revision Commission and this is Mr. Albert Day of the firm of Hill, Farrer & Burrill in Los Angeles. The firm is the commission's consultant on the study which it is doing. The outline of the study, as we will be pre-

pared to show you in a moment or I can do it now, is rather lengthy and I haven't gone into it in detail for some time. I don't know whether so much of the work that you have done covers this particular point of relative interests of co-owners but could you respond to that Mr. Day?

MR. DAY: Our present study does not cover that particular field. It is limited to costs of moving, a discussion of the new pretrial rules.

CHAIRMAN: Pardon me, so we don't get all mixed up in here. Let's just settle this matter here of co-owners. Mr. Bohn, don't you think it might be a good idea to get in touch with Senator Cobey and find out what he had in mind and if there is a problem of co-owners, then the committee can go into it if that is agreeable. Will you proceed with your report, Mr. Bohn?

MR. BOHN: We have two other matters on the agenda which do not involve eminent domain and it would be my suggestion that those two matters be held until the conclusion of the hearings on eminent domain since they don't involve these witnesses or anybody except the members of the subcommittee.

CHAIRMAN: That's agreeable.

MR. BOHN: Then it was my thought, Mr. Chairman, with your permission, that we consider each one of these bills in detail and that in doing so, we ask Mr. Emerson Rhyner, who is here and who is scheduled as first witness, to discuss them from his point of view, starting with those bills which the Governor vetoed and which we must therefore assume that the Legislature at least thought were desirable but for some reason or another the Governor's office decided that they were not and then from those go into a detailed discussion of the other bills.

CHAIRMAN: Mr. Bohn, I think as far as the committee is concerned, we ought to get this clarified. As I understand it, now insofar as the first group of bills is concerned, bills in Group A and B, the staff has done some work on them which is not completed. Now, I think we ought to decide—is it your idea to have a further meeting on this? To make a final report on it?

MR. BOHN: I understand that a partial report of the California Law Revision Commission will be ready the end of this year. I was hoping that two things would occur. First of all, those bills which were previously passed by the Legislature but vetoed by the Governor, I was hoping that the committee today might make a determination as to those bills. As to the others, there is additional work needed on them and I was hoping that the final decision on those could be delayed until we get the report from the Law Revision Commission, at least as to those subjects which they are going to study.

CHAIRMAN: Is there any question by members of the committee on the procedure?

SENATOR COOMBS: As far as I'm concerned, Mr. Chairman, you're the boss and whatever you do will be agreeable to me.

CHAIRMAN: Well then, perhaps what we ought to do is to take up the bills starting with 2531 on page 3 and consider the three bills which have been vetoed. There's only one question I have, Mr. Bohn, do you think that all of the people that would be interested in these bills have been notified and have had an opportunity to be here or not?

MR. BOHN: I can't be sure of how many people would be interested in these particular bills but all the persons—we had no real interest in

these bills except from the State Department and the Los Angeles County Counsel's office during 1957.

CHAIRMAN: These three bills apply only to highway condemnation don't they?

MR. BOHN: Yes, I think those are state bills.

CHAIRMAN: My only concern is that all of the people that might be interested in them have been notified. If they're not here, why that's it.

MR. BOHN: The only people that have been notified, in addition to the present witnesses, are several attorneys who were all the mailing list we had in our file who had expressed any interest in eminent domain and we wired one and asked if he wished to appear and have written to several others and they apparently did not wish to appear. Apparently it is a subject that is of peculiar interest to the committee and to the State Department.

MR. CHAIRMAN: We will then proceed. Mr. Rhyner, do you want to make a presentation on these three bills?

MR. RHYNER: Thank you, Senator. I believe I should correct one item first and that is that I don't believe any of these bills are restricted to condemnation or acquisitions for merely highway purposes.

CHAIRMAN: They would have general application, would they?

MR. RHYNER: They would apply to all condemnors, yes.

CHAIRMAN: Oh, fine. All right.

MR. RHYNER: I would like to comment on them. They're all procedural bills and I might start off by saying that none of them are going to be fatal to our operation or seriously hamper it, but we do feel that all three bills would cause more unnecessary administrative work. Now taking up SB 2531 first. That says that before any condemnor can make an offer to buy property—that applies both when he's buying it and after condemnation has commenced—that the offer has to be in writing, that it has to itemize all the elements of damages and it has to be dated and signed. Quite often, in fact, our usual procedure—

CHAIRMAN: Pardon me, Mr. Rhyner, just so we can get this straight, I think we should follow this on page 244 which is the amended bill, which is under consideration and I think that bill was considerably amended, wasn't it?

MR. RHYNER: Yes, it was.

CHAIRMAN: And on page 243, is the original bill and 244 is the amended bill and you are now speaking to the amended bill, is that correct?

MR. RHYNER: Yes, that was vetoed by the Governor.

CHAIRMAN: Is that understood now? You may proceed.

MR. RHYNER: Thank you. Our usual procedure in the Department of Public Works is that the negotiator after an appraisal is made, goes out and talks to the property owner. If it looks like both parties are agreeable he may well have a right-of-way contract in his briefcase with blank amounts and if it's an agreeable arrangement the parties sign up right there with the amounts filled into the contract. That is quite often the case—97 percent of our acquisitions are agreeable between the department and the property owner—no condemnation trial is involved.

If this bill were the law before we could make an offer in such a case, the negotiator would have to go back to headquarters, have an offer typed up, signed by somebody at headquarters, then go out again to see the property owner—and it wouldn't matter much if the property owner resided at the place of headquarters but where the property owner resides a long ways away from the district office and this is quite often the case, we have a hundred miles or so involved, it just means that amount of additional work and that is about the sum and substance of that bill.

CHAIRMAN: Any questions by members of the committee?

SENATOR BUSCH: You stated a few moments ago that quite frequently you have a form in your briefcase and the parties agree upon them and the figures are put in—is that right?

MR. RHYNER: The right-of-way contract is normally the instrument that is used to acquire property for the Department of Public Works, Senator. That contract is normally made out with the property description on it and ready to go. The negotiator goes out and sees the property owner and if they're agreeable, and as I say, 97 percent of our cases are settled by negotiation.

SENATOR BUSCH: Why wouldn't that comply with the provisions of this act?

MR. RHYNER: Well, I don't know that. That's an offer within the meaning of the act, Senator.

CHAIRMAN: Pardon me, may I get into this thing so we can get straightened out—I'd like to know the same thing. When you have your right-of-way agent going to the condemnee they discuss, they negotiate, and they arrive at an oral agreement, is that correct?

MR. RHYNER: Yes.

CHAIRMAN: And that oral agreement then becomes the right-of-way contract.

MR. RHYNER: Well, it is formalized into the written contract.

CHAIRMAN: Yes, that's what I mean. As I remember—no, I don't think you gentlemen were on the subcommittee that considered it. The reason for this—it was introduced by Senator Desmond—was that it was indicated that in some instances and I might say maybe many instances—what happens is that an offer is made by the right-of-way agent to the condemnee and after the offer has been made and accepted then they go back and then the State comes back and says "I'm sorry but I can't get approval of the offer and now we have to change it"—the purpose here is, when there is a negotiation and when an offer is arrived at, it should be in writing.

SENATOR BUSCH: Well, but that's what he is saying here. Apparently they do have the negotiator who has signed the contract—isn't that binding upon the State at that time?

MR. RHYNER: Normally it is, Senator; in any event if an oral agreement were reached under this law, he'd have to go back and have a written offer prepared so you'd have the same situation.

CHAIRMAN: No, no. Let's get this straight. What is intended here is that any offer that is made shall be in writing.

MR. RHYNER: That is correct.

CHAIRMAN: In other words if the negotiator goes out there and makes an offer then that offer must be in writing and if the condemnee

accepts it that's it. I know, I've had the experience myself where offers have been made and then they've been withdrawn and they've been changed and so forth and the condemnee actually doesn't know where he stands until he actually gets the right-of-way agreement that is signed by both parties. Now this is for the purpose of—and it also has another purpose—and that is, it says "must itemize the various elements of damage that do comprise the total amount of such offers." Now you can have perhaps a question of expenses, you can have a question of severance damages and you have all of those various elements. Those elements would have to be set forth so that once an offer is made so that the offer can be accepted by the condemnee and not changed by the condemnor.

MR. RHYNER: That is another item that I wanted to bring up, Senator. Normally, as I understand condemnation law the matter of severance damages is determined by what the remaining property is worth on the market, it isn't broken down into items—what will a fence cost or how much is this man damaged for this particular removal of right of access or anything. The law says that the manner of determining damages is what is the remaining property worth on the market at this severance and I think when you break down these items you are in effect changing or asking us to make a statement which is not in accordance with condemnation law.

CHAIRMAN: Oh no, because let's start out—you have 20 acres, you are taking one acre. When you make your offer you say this one acre is worth \$10,000. In order to segregate that one acre you have to build a fence that is worth \$200, and now there's no access insofar as the remainder of the property is concerned—that means that the remaining 19 acres were worth—in round figures—\$20,000 and now one acre is off so you arrive at a basis for the severance damages, how much the remaining 19 acres are worth less by reason of the taking—by reason of nonaccess.

MR. RHYNER: That's right.

CHAIRMAN: That's the severance—so you say arbitrarily—say \$6,000 is for severance—so you make a total offer of \$17,200; now I don't see where anybody's going to be hurt by that.

MR. RHYNER: According to this bill we would have to itemize how much the man is damaged because perhaps his house is closer to the highway after construction than it was before. According to this bill we would have to itemize how much perhaps his farm is damaged because we have cut it in two and how much it will cost to bring his equipment across the highway.

CHAIRMAN: That's right.

MR. RHYNER: According to this bill we would have to itemize how much more it would cost him to operate his orchard per tree because we have taken so many trees. Now it is my understanding, Senator, that that is not the way severance damages are arrived at. Severance damages are arrived at considering the matter as a whole, how much is the property worth after severance and not by breaking down these various items and then adding them up and I think I can get the committee cases on it that the proper way of determining severance damages is not to add up your various items of damages but to consider as a whole, first of all what is the value of the part taken,

as you indicated, and then secondly, what is the value of the remainder, not by adding up your various items of damages.

CHAIRMAN: Nobody is going to argue with that, Mr. Rhyner. The whole thing is when the State makes an offer, any condemnor makes an offer, he must determine what the elements of damages are and the total is what he's going to offer. Now it's that simple.

MR. RHYNER: Well, it may well be, Senator, that our negotiators discuss that when they go out, it costs you so much to move this equipment across the freeway, but it is not my understanding of the legal works to determine severance damages and I understand that such testimony based upon that method can be stricken by the court. I'll be glad to get cases on that.

SENATOR COOMBS: I'd like to ask a question. For instance, you find this condition just a great many times. The highway is running through certain towns and cities and counties, etc., and the Department of Public Works has in mind making changes in the highway. For instance, a right-angle turn that can take Joe Doakes' property consisting of two acres. I have one of them by the name of Stoddard, just out of Napa and they tell him they are going to take his property in about a year. He has a warehouse there with feeds and so forth, well, he's just out on the end of a limb. He has to wait a year before they condemn it or file their action. There's nothing he can do in the meantime. Such a condition as that shouldn't exist. There should be some way that the department could enter into an agreement. I should think that the owner of the land agreeing on a price the value of the property to go into effect as of certain dates when they have the available funds.

MR. RHYNER: You have cited a problem, Senator Coombs. There is no question about it. People in the path of the freeway are sometimes, their property is frozen when we do not have the money to acquire it. As you know, the Legislature passed the right-of-way acquisition fund which allows us to acquire certain properties in advance. That was used up rather quickly—it was about \$30,000,000 and I understand it is fairly well exhausted. I'm afraid that the property owner in the usual case would not want to enter into an agreement for a purchase at a later time because we have a rising market and it would mean that he would be in effect agreeing to sell his property next year at a price which would be fixed this year.

SENATOR COOMBS: If he agrees on a price he certainly can't complain, and he's up against the gun on a rise in prices and values on property that he'll have to buy after the State or county or whatever the political subdivision is that takes his property. In other words he isn't going to quit the business that he's in.

CHAIRMAN: Senator Coombs, let's get this straight here so we know what we are talking about. Number one is, if the State says we are going to build a highway and if the local jurisdiction puts in setback lines and so forth I think there's some misunderstanding Senator. Actually, the person whose property is involved can sell it or do anything that he wants to except that once the setback lines are in and it has been determined the highway is going in, the salability of his property is practically nil. He's stuck, isn't he?

SENATOR COOMBS: Sure. He's stuck. Not only that, he's out on the end of a limb on his business.

CHAIRMAN: I will say this that where the State has been able to use the revolving fund for rights of way purchases they have been very co-operative as far as moving in and trying to work the thing out.

SENATOR COOMBS: The delay on this case is that they haven't the money and they won't have it, as I understand it, until July of next year.

SENATOR BUSCH: Gentlemen, aren't we getting off the track a little bit here?

CHAIRMAN: Yes, I think we are.

SENATOR COOMBS: Well, I'll drop the subject then.

MR. RHYNER: You have posed a solution Senator Coombs, a fact we haven't thought of—that of entering into the contract at this time for execution at a later date and I'll certainly discuss it with the people in the department.

MR. BOHN: May I ask a question?

CHAIRMAN: Yes, Mr. Bohn.

MR. BOHN: I'm a little bit confused, Mr. Rhyner, about the measure of severance damages. It was my general understanding that the severance damages to which you were entitled was the diminution in the value of your property remaining by virtue of the taking. Now is that an erroneous statement?

MR. RHYNER: That is correct.

MR. BOHN: Well, let's take a cattle ranch where the land is worth let's say \$50 an acre for want of a better figure. The freeway cuts it in half in such a way that it becomes difficult or costly or perhaps dangerous to move your cattle from one side to the other, and yet in any numbers or at any convenient time. Well now, then the amount of acreage taken by the State Division of Highways would be, let's say, comparatively small, but the property which was left under the assumed facts here would not be an economic unit for a cattle ranch, which requires a certain number of acres per animal and so on and so forth. Or take an orange grove, where economically you have to have a certain number of acres and a certain number of trees in order to make the maximum use out of your equipment, so that if even a comparatively few acres are taken away or if the ranch is split, then you have excess equipment over your needs, means excess capitalization insofar as the return is concerned. Now aren't all those factors material in the issue of severance?

MR. RHYNER: They are factors to be considered, Mr. Bohn, in arriving at the market value of the property that is remaining after its severance. They are factors to be considered, but an appraiser cannot itemize those items of damages and come up with a total and say and subtract that from the market value before and say this is it. As I understand the law, if he appraises in that method his testimony is subject to be stricken.

CHAIRMAN: Well, Mr Rhyner, I must go back—you are entirely correct on what you say insofar as the method of appraisal is concerned and the basis for the evidence and upon which he will present it in court, but we are talking now about an offer. Now certainly, the State or any condemnor in order to make an offer must determine the various elements of damages and come up with a total figure to make the basis for the offer. As a practical matter, isn't that true?

MR. RHYNER: No, I disagree Senator. The cost of restoration or the manner of itemizing damages and subtracting them is not considered to be a proper method.

CHAIRMAN: Maybe we don't understand it. I'm not talking about subtracting. I'm saying that you take your various elements of damages. The one acre is worth so much. You take your second element, you take your third element, you take your fourth element and you add them up and that is the total amount that you're going to offer. Those are the elements of damages. I'm not talking about subtracting.

MR. RHYNER: Well, nevertheless, you are breaking down your various elements of damages and then reaching a total as I understand it. That is incorrect method of appraisal.

CHAIRMAN: Only insofar as it may become pertinent material or relevant in presenting evidence before the court, it has nothing to do with the method of arriving at a basis for an offer.

MR. RHYNER: Well, presumably Senator, our appraisals are made on the basis that they are presentable in court. Moreover, in the matter of circumstances it may be difficult to break down exactly. For instance, how much the man's house is damaged because he is 20 feet from the freeway instead of 40 feet.

SENATOR DOLWIG: Well, Mr. Rhyner, here is I think the question that arises insofar as this bill is concerned and that is when you make an oral offer the State determines the various elements of damages in making the oral offer. Isn't that true? I don't care how they arrive at it.

MR. RHYNER: They may discuss them with the property owner. The appraisals are not set out that way.

SENATOR DOLWIG: All right but they say we will pay you \$10,000. That's the offer isn't it?

MR. RHYNER: That's the offer.

SENATOR DOLWIG: All right, now what's the difference between that and the requirement that it must be in writing and specify the elements of damages? They take that same offer of \$10,000—Senator Desmond will you please come up here? We are discussing one of your bills here.

SENATOR BUSCH: There's one thing, Senator Dolwig, that as long as you ask me to state—set forth in his offer these various items of damage. Now, I submit that to the individual landowner and then he comes back with a lot of other items of damage that he considers should be involved there. I figure that you're imposing an undue burden on the state because I can figure out a lot of items of damage if you specified in here what items of damage should be set forth, that might be one thing but when the state does make its offer and sets forth what it considers to be the various items of damage I think the landowner comes back with a lot of others, including what the state has set forth.

SENATOR DOLWIG: Senator, let me ask you this. When you're representing a plaintiff in a personal injury suit, when you get down to arriving at a compromise and settlement, you set forth your special damages and you set forth your general damages and everything that is involved in the case and you finally arrive at a figure, now I don't know if that's been your experience. Mine has been that when you sit

down with other attorney or the adjuster you sit down and say well I've got so much special damages and so forth and you discuss those. I don't know why the State should be any different than private parties insofar as this matter is concerned. Actually, I think there is a greater burden upon the State to make a disclosure on the case.

SENATOR BUSCH: That's what you are doing here. You're putting a greater burden upon the State. If two individuals sit down nothing has to be in writing, they agree between themselves. In a personal injury case for instance the attorneys talk it over, they don't have to put it into writing. Why are you——?

SENATOR DOLWIG: Senator Desmond is here, but I am going to bring out one other fact that we discussed at the time and that is it has been indicated that this has been the experience that has been had also by private attorneys in these condemnation matters and that is you arrive at an offer which is acceptable by a right-of-way agent. In about a week the right-of-way agent says, "Well, I'm awful sorry. I've got to change that because I went back to my supervisor or section chief and he didn't agree with that so we are going to have to change that then." So the condemnee agrees to that.

Then the thing is agreed upon again and it goes to the section chief and he approves it. But then they come back and say, "Well, we're sorry but we had to submit it to Sacramento for approval and they didn't accept it." So then you start all over again. The purpose of this bill as I remember, Senator Desmond, is that if there is going to be an offer that the offer be in writing so that the condemnee knows that this is a bona fide offer that when he accepts it, that's it. He's not going to be pushed around, receive various other offers, they are going to be withdrawn and changed. And I think that is the essence of it, isn't it, Senator Desmond?

SENATOR DESMOND: Well, that's true. I think that's the purpose of it. It gives the condemnee an opportunity to know what he is negotiating about and at least what the Right-of-way Department of the State are basing their valuations on. Now what's wrong with that? He certainly has the right to the market value of his property and if there's any severance damage involved whether or not he's being paid any severance damage. That, in addition to the fact that it's been my experience, with all due respect to the Division of Highways, it has been my experience in dealing with these right-of-way problems that they will negotiate all over the lot and say, "Well, maybe I can do this and if, and, and but . . ." And the condemnee never knows what he's getting.

SENATOR BUSCH: Isn't that true of insurance adjusters when you talk about personal injury cases?

SENATOR DESMOND: All right, but you're dealing with something here that you're not dealing with in a personal injury case. In a personal injury case the only thing that you have any knowledge of is the special damages. You know what you've paid for doctors, what you've paid for medical expenses, hospital and so forth. Here you don't have that. You have a situation where you know you're entitled to the market value of the property and that's number one. And now we have the rule in the Faust case that the condemnee is entitled to know what's paid for other properties in negotiations—not in actual sale but

in negotiation. You have all of those things that have changed this picture to some extent.

All we're trying to do is to help the State as well as the individual. I don't know what the argument is made here against the bill, but I'll give you a typical example. We're trying a case today, just started to select a jury over there today on an eminent domain case where the Right-of-way Department—there are two or three things involved, have a lease involved, we've got severance damages, several things involved in this case. The best offer they made to us in compromise was less than \$22,000 if I remember correctly, around that neighborhood. Last week after we got the case set, ready to go to trial, we got all of our witnesses, they come around and offer \$45,000. Now why didn't they offer that in the first place? Are you familiar with that?

MR. RHYNER: I am not familiar with the case at all, Senator. I can give you a reason of what sometimes happens in that instance.

SENATOR DESMOND: Well, what happened they just overlooked some of the elements of damage and until we let them know we were going to court to try them.

SENATOR DOLWIG: Senator, your point, I think, is this: If the elements are set forth in an offer, and you start negotiating on that basis you are more likely to come to a realistic figure and an offer and settlement than you are under this situation.

SENATOR DESMOND: Plus the fact, and this is what I think more important than anything else, you're not placed in a position if the case gets into the hands of an attorney where an attorney has to talk to his clients and say, "I'm not sure what they are going to pay but they intimate they will pay this. Now what's wrong with putting it in writing? They make an offer. Supposing there are 10 or 20 or 50 thousand dollars short. They at least have made their offer in writing.

-----: The offer is not evidence so if-----

SENATOR DOLWIG: That's right. It's so stated in the bill that it can't be used.

-----: It isn't under the present law.

SENATOR DOLWIG: No.

SENATOR DESMOND: It didn't hurt them a bit.

MR. RHYNER: Quite often, Senator, in answer to your first item of the matter of this problem, we have our appraisals made by our staff appraisers who are employees of the Division of Highways. They are supposed to offer the appraised amount to the property owners.

SENATOR DESMOND: Give the owner the breeze? (Laughter.)

MR. RHYNER: Then when the case looks like it's going to trial, we do not send our own appraisers into the courtroom usually. We go out and hire independent appraisers who will appraise for a fee and the appraisal is not an exact business as you know. It's not an exact science. Sometimes our outside appraisers will come in at a lesser figure than our staff appraisers and sometimes more. But it is a firm rule of the Right of Way Department that we offer the man, the property owner, the highest amount of the appraisals that we are going into court with before trial starts so he has an opportunity to settle.

SENATOR DESMOND: Why don't you offer him that in the first place before he gets around to where he has to go to court?

MR. RHYNER: Because we haven't hired the independent appraisers yet.

SENATOR DESMOND: That's right and your appraisers are always too cheap.

MR. RHYNER: I can recall instances where the independent appraisers came in with less than our staff appraisers.

SENATOR DESMOND: I've never had that experience and you know we've tried plenty of these cases.

MR. RHYNER: I know you have.

MR. BOHN: May I ask a question, Senator?

SENATOR DOLWIG: Yes, Mr. Bohn.

MR. BOHN: Mr. Rhyner, may I ask this question? Is your major objection to this bill the putting of offer in writing, or the breaking down the offer into details?

MR. RHYNER: I think first of all that the bill would cause more administrative work. Now, that of course is up to the Legislature to decide.

SENATOR DOLWIG: May I interrupt there? I have said this twice and I must say it again. Why is there more administrative work in arriving at a basis for a total figure upon which you make an offer when you do it orally or when you do it in writing? Where is there more administrative work? Your right-of-way people and your people must still get together to determine what the elements of damage are in order to arrive at a total figure which you are going to offer to the condemnee.

MR. RHYNER: Take an example of a negotiation going on, Senator. The negotiator goes out and says, "Well, I can't . . ." I mean they go over the various items as you say and agree on some and disagree on others and finally they reach an agreement and the negotiator says, "I'm sorry but I can't make you an offer. I can't make you an offer subject to headquarters' approval because the law doesn't permit me to do it." So the thing stands in abeyance until it finally gets up to headquarters and it comes back in writing. Then he takes a trip out again to the property owner and hands him the written offer.

SENATOR DOLWIG: That's the way it should be.

MR. RHYNER: Well, that's as I say is—

SENATOR DESMOND: If he can't make the offer in the first place, why does he go out there? He goes out there to start talking about something and after he's had the conversation then I presume, according to what you say, he comes back and reports it to District 3 in Marysville, we'll say or wherever it goes for an appraisal or wherever it goes to fix the price. And then it becomes one of the worst horse trading deals that ever occurred. It's always an if, and, or but proposition. Now, if your department says the property is worth \$5,000, the damages are worth \$6,000, \$11,000 is our offer. What's the difference between going out and saying it orally or putting it in writing?

SENATOR DOLWIG: That's right.

SENATOR DESMOND: Well, I know what the difference is. They want to change their minds and they are afraid they can't if they put it in writing. That's the point.

MR. BOHN: Mr. Chairman, may I ask a question?

SENATOR DOLWIG: Yes, Mr. Bohn.

SENATOR DESMOND: It's only a written offer and compromise. It isn't evidence.

MR. RHYNER: However, I think we should be able to change our minds. The property owner shows us that we are wrong on our appraisal. I think in all fairness to the property owner we should be able to change our minds and raise our appraisal.

SENATOR DOLWIG: You can make another written offer.

MR. RHYNER: It means another extra trip. That's all. Now if the Legislature feels that is warranted I was warned that I should respectfully suggest to the committee, rather than say itemize various elements of damage that you say would set forth the value of the part taken and the value of the part remaining after taking. And that would make it in accordance with my, our understanding.

SENATOR DESMOND: No sir. That's not right at all. Because I can show you instances where you have come in with your plan and you have gone and filed your complaint and you've described the part you have actually desired for the public improvement in accordance with the plan you've described in your complaint for metes and bounds. And then, when the question of severance comes along, you've amended your complaint and taken the whole parcel.

SENATOR DOLWIG: That's happened.

SENATOR DESMOND: Now, that's happened and I can show you the case over here from Fruitridge Road, the Cox case. You did that. And then what did you do afterward? And this is the bad part about your whole eminent domain proceedings. You turned around and leased the balance of that property which you didn't need for the public improvement at all. And leased it, and the State owns it. It isn't on the tax rolls of Sacramento County any longer, but the State has leased the property to an individual for a sash building plant which he had on it already. Now don't tell me those things. You have amended your complaint because you figured that the severance damages would cost you more than taking the whole parcel of property.

MR. RHYNER: That was undoubtedly the reason.

SENATOR DESMOND: All right, then you go back to the constitutional requirement that you cannot take property except for a public use. And we have gotten ourselves into the silly position of recognizing in the law the fact that the resolution of the commission is sufficient to determine public use. And yet you take property that you don't need at all.

MR. RHYNER: Well, Senator, the Legislature enacted a statute several years ago . . .

SENATOR DESMOND: I know all about it and I fought it all the way down the line when your Highway Department was contemplating all this business of freeways and everything else, you came over and sold the Legislature all these ideas. I opposed it and I'll continue to oppose it. I sold them the idea you people lobbied (I don't know whether you were in the department or not) but Reed was and your former highway director, Frank Durkee, all came over here and lobbied those bills through the Legislature. They tell me . . .

SENATOR DOLWIG: Senator, I think perhaps this committee would be in order. Mr. Bohn, I am going to request that we would like

to have a report on all the surplus properties that you have had in the last five years and the total figure. You must have the record?

MR. RHYNER: You mean excess property taken. I'll be glad to get that for you.

SENATOR DOLWIG: And what your sales have been in the past number of years. I know I've been surprised in my own county to find the number of sales for excess property that have been going on in the last year.

MR. RHYNER: Excess property acquired . . .

SENATOR DESMOND: Not needed.

SENATOR DOLWIG: Not needed and then later sold as surplus property and incidentally, perhaps we ought to have a record of what excess properties you are still retaining and leasing. I think we ought to know that.

MR. RHYNER: I will certainly get that for you, Senator. The practicability of the thing that if the damages to the remainder are going to be \$40,000 and the property is only worth 20, the economical thing for the State to do is to acquire the property for \$20,000 and thereby save the difference.

SENATOR DESMOND: Well, how do you justify? Now look, you are working for the people of the State of California and this is a two-edged sword. The property owner is the people, isn't that right?

MR. RHYNER: That's right.

SENATOR DESMOND: Why do you take his property when you don't need it? Just to save what the law contemplates is giving him justice and paying him severance damages and let him keep his property.

SENATOR DOLWIG: And adequate severance damages are the thing.

MR. RHYNER: We are acquiring the property because the severance damages to it are more than the property is worth.

SENATOR DESMOND: The law doesn't permit that. The law only permits you to acquire property which is necessary for the public improvement. That's my point.

MR. RHYNER: Well, it is questionable.

SENATOR DOLWIG: Well, I think Mr. Bohn made a good point too. And that's inconsistent with what you've been discussing, Mr. Rhyner, insofar as your definition of severance damages is concerned.

MR. RHYNER: Suppose a property is the size of four acres and we take two acres from the property; and remaining two acres—say it is worth \$1,000 an acre, that the severance damages are such. Suppose that we landlock it.

SENATOR DOLWIG: Yes, it is valueless, as a result.

MR. RHYNER: Suppose that we landlock it, the severance damages are equal to its total amount. Now, you mean we should pay the total amount of severance damages to the property owner and leave it a worthless piece of property or shall we buy the property for its market value and made some use of it for the State?

SENATOR DOLWIG: My point is this. If you can make use of it for the State then why shouldn't you make use of it for the property owner who is being damaged?

MR. RHYNER: Well, because, you take a piece of landlocked property, we pay the property owner say \$2,000 in this example, which I have formulated, which is the total amount of the value of his property. Then he turns around and sells it to a neighbor for the \$2,000 because the neighbor can use it. And in effect he has made \$4,000 off a \$2,000 piece of property.

SENATOR DESMOND: Why shouldn't he? It is his property. You have no right. I want to tell you something, Mr. Rhyner, that—just a minute, you destroy the right of private property, which you people are doing and the redevelopment outfit is doing it in the City of Sacramento and all these condemning agencies are doing it. You have laid the foundation for destroying private personal freedom. The right of property is just as essential as my right to stand out here on the corner and express an opinion about something or somebody, so long as I don't defame their character. And you're in the same... the State is no different. The State is not omnipotent to take a person's property that they don't need for a public purpose on an economic theory that they are going to save money. That's my point.

MR. RHYNER: It is a question of whether or not it is a public purpose.

SENATOR DOLWIG: Now, just a minute Mr. Rhyner. I've got properties there on Bayshore Highway that I've noticed have been going up for sale in the past year. Now that property is increased conservatively 40 percent in value since the State purchased it. Now that land owner got paid on the original value at that time.

SENATOR DESMOND: As of the date of the filing of the complaint?

SENATOR DOLWIG: As of the date of the filing of the complaint. Now, five years late the State is now saying this is excess and they are now selling it at 40 percent more than what they paid to the original owner. And that original owner is out that. He's out of the picture now and that is his loss. And the State is getting that benefit. And I agree with Senator Desmond. I don't think that is what was contemplated under our condemnation law.

MR. RHYNER: The increase in debt that was caused by the Highway Department?

SENATOR DOLWIG: No! No! No!

MR. RHYNER: It may with that situation.

SENATOR DESMOND: That's one of their arguments. They will always come back and say the improvement is going to increase the value of your property, therefore you ought to allow that in the value of the property taken. Which is one of the silliest arguments I ever heard.

MR. BOHN: May I ask a question, Senator?

SENATOR DOLWIG: Yes, Mr. Bohn.

MR. BOHN: I would just like to clear one thing in my mind, Mr. Rhyner. I cannot, at least I couldn't before, agree with your definition of severance damages. Because if severance damages is the market value of the property which is left, then under no circumstances, could you buy the property cheaper than the amount of the severance damages isn't that so?

MR. RHYNER: You can buy it for the amount of severance damages.

MR. BOHN: Yes, now you were using the example of . . .

SENATOR DESMOND: In severance damages market value. I didn't hear him say that.

MR. BOHN: Yes. In other words, my idea of severance damages has always been that it is the diminution in the value of the property that you have left resulting from the taking, which to me is a much different concept than market value of the property as it's left could be so many hundred dollars an acre or whatever it might be. Whereas in the Los Angeles Times case or whatever it was, the amount of property taken was a comparatively small amount but by virtue of the peculiar needs of the industry which was using it, it caused an enormous amount of damage. And the property which was left, although it might have a market value, for the use of that particular organization was impossible.

MR. RHYNER: One way of computing severance damages is computing the diminution in the value of the property based upon its market value before the take and the construction of the improvement in the manner proposed after the severance and the construction of the improvement in the manner proposed. Now if I . . . Now that difference you put it on the basis of a fact. That difference, you see, is the amount of the severance, but it is based on market value of the remaining parcel before its severance and after its severance.

MR. BOHN: Well then, let me ask the question again. If that is true under what circumstances would it ever be cheaper for the State to buy the remaining property than it would be to pay severance damages?

MR. RHYNER: Severance damages can equal the amount of the value of the property.

SENATOR DOLWIG: That's still not answering the question, Mr. Rhyner.

MR. BOHN: But it never can exceed it under your theory.

SENATOR DESMOND: Oh that isn't true.

MR. BOHN: Some of these properties, as I understand it, are being used for a peculiar and specific purpose by a peculiar or by a specific owner and the market value of the property left may be x but insofar as the damage to the owner is concerned its x times 20. It isn't assumed he's operating the economic unit of the ranch that I mentioned or the economic unit of a factory which needs so many square feet. Now it may well be that the property which is left over is just as valuable for a different type of business or for a different owner, if you could find a different owner, or if a different business would go in there, but that to me is hardly the measure of damages as to what's happened to the existing owner.

MR. RHYNER: Of course, what has happened to the existing owner was not the matter of market value. Market value is what . . .

MR. BOHN: That's why I am afraid you can't use the term market value because I thought that the Constitution required full compensation to the owner for his damages.

SENATOR DOLWIG: Well, I think, Mr. Bohn, the courts are taking recognition of what you've mentioned here too.

SENATOR DESMOND: I'll tell you where I think Mr. Rhyner is wrong and why I think his conception is wrong. It is my conception of severance damage is the value of the remaining portion before the taking and the value of it after the taking. Well, let me give you a

typical example. All right, here is 74 acres of land. It isn't market value at all. Here's a case of yours. Here's 74 acres of land where you are condemning 99 this side of Galt and Galt never grows. The man had access to this parcel of the land through a gate on the old highway, right here, relatively in this point. That's the only access he had into this 74 acres. He owned all this land down here and here's the Cosumnes River so they've separated the two parcels of land. Southern Pacific Railroad over on this side, private property on this side. So the only access he had was here. They came along and condemned the right of access across the frontage. He's landlocked, he can't get to his 74 acres. Now, the value of the 74 acres is much less obviously after the destruction of the access here, isn't it? So where is his market value? The market value has gone down and that's his damage. Now he's got 74 acres of land he can't get to, it's worth nothing.

MR. RHYNER: The market value would be zero.

SENATOR DESMOND: That's right!

MR. RHYNER: That is exactly right.

SENATOR COOMBS: He has a special severance damage for that.

SENATOR DESMOND: Sure, there is a special severance damage. It's the damage, not the market value.

SENATOR DOLWIG: That's right. Well, gentlemen, I think we've pretty well gotten into the overall picture here. Let's get back to 2531. We're still back on this. Incidentally, Mr. McDonough or any of you gentlemen back there, if you want to get into this matter and if you have anything you want to add, we'll be glad to hear from you.

MR. McDONOUGH: At the present time, Mr. Chairman?

SENATOR DOLWIG: Yes. Pardon, you're not through, Mr. Rhyner. I assumed you were through.

MR. RHYNER: Yes, sir, I'm through.

SENATOR DOLWIG: All right, do any of you gentlemen have anything further to add on 2531?

MR. LARSON: I am John Larson, Deputy County Counsel of Los Angeles County, representing that office here today.

SENATOR COOMBS: Any water you want to give away this morning?

MR. LARSON: No, sir.

SENATOR COOMBS: I'm just trying to be funny—go ahead.

MR. LARSON: Well, at times that hasn't been a funny subject around our office.

Laughter: Senator Desmond, Dolwig, et al.

SENATOR DESMOND: It isn't funny around here either.

MR. LARSON: I guess that's why it hasn't been funny down there. I made two assumptions in this particular bill, 2531, which were just the opposite of the discussion previously. One of those, I assumed that the breakdown of the severance damages would be the same as though you would introduce them in court. The bill says the breakdown of damages . . . I assumed that the written offer, if it was sent or given to the owner, would say part taken so much, severance damage so much, without a breakdown of so much for building a driveway, so much for putting in masonry walls, so much for moving a tree back, and so forth. Those little elements that may have gone into it from the discussion, apparently that isn't the purpose of the bill. The purpose of the

bill apparently is to include all those. I'm not sure. The first part would be all right if you broke it down into various elements as the code requires the damages to be determined by the court. There are six or seven items set forth in the part taken, the severance damages, the special benefits, the relocation of facilities, and the three or four other matters that are set forth in that section. If I am wrong on that it would make a little bit of difference—but the 1240 or 1241.

CHAIRMAN: Does anybody have a code here?

MR. LARSON: 1248 sets up six separate items of what must be determined by the court, the first is the part taken; the second is the severance damages; the third the special benefits; the fourth refers to water and that is a separate special benefits section by result of a diversion of water; the fifth is an item referring to railroad, the costs of sufficient fences along the line of the right-of-way and cattle guards and so forth; and the sixth is the removal, relocation or alteration of structures and those costs. And I just assumed that this bill meant that if those elements were involved you set them up only insofar as the elements were involved, the same as your opinion that would be if you went——

SENATOR DESMOND: Let me see that . . . let me study that.

MR. LARSON: But more important, if we have a different situation, I am in charge of the Condemnation Division for our office and as you know, we do represent about 113 odd school districts plus the counties in the various districts. Now many of these school districts are not equipped, there is only one that is fully equipped with a right-of-way or lands, not a right-of-way but a lands acquisition or real estate section. Many of them are school districts that consist of one school board with five members who are suddenly met with an onslaught of subdivisions. Some of these things will not and especially the offer situation will not fit into normally their pattern of operations. They can not make a binding offer. In most of the school districts are what we know as distressed school districts. You are probably fully familiar with that fact, their money is allocated by the State Department of Finance, the local allocation division. They can not make an offer that is binding on the school district even. Before they can tell any property owner that we will pay you so much money for your property they have to go to the State Allocation Division and get authority to spend that much and that has to be supported by a written appraisal with them.

The reason I bring that out, if the purpose of the bill is to make sure that when an offer is made it is binding on the owner and on the public and on the public body rather and gives the owner an assurance that his property will be purchased at that amount, it won't accomplish it as to those school districts that have to go to the State and it won't accomplish it as to the counties, who of course, have to have a notice of intention to purchase and so forth. The right-of-way agents, the property agents, all they can do is go into escrow and have an option to sell signed and publish and notice of intention to purchase and it comes up before the board of supervisors. Ninety percent of the time, well, I'd say 99 percent of the time the board of supervisors approves the acquisition, but occasionally they will turn it down at that time.

SENATOR BUSCH: Don't you think you could put in the offer that it was subject to confirmation of the Allocation Board, the board

of supervisors. It would still be an offer complying with the language of the section, wouldn't it?

SENATOR DESMOND: Certainly, it would.

MR. LARSON: If it is not intended to be a written offer it would comply with the section.

SENATOR DESMOND: It wouldn't come under the rules and there's no intention to have this come under the rule contract there. Where there is an offer and acceptance and once the offer is accepted, it is binding. Now, that isn't the purpose of this bill. The purpose of this bill is to give the landowner some definite commitment of what you are willing to pay for the property if it is approved by whoever has charge of approving. That's all this is for.

MR. LARSON: Insofar as condemnation is concerned there would be no particular problem, I cannot see.

SENATOR DESMOND: It's only where there is condemnation.

MR. LARSON: No, it requires it in all purchases and—

SENATOR DESMOND: I don't think so and I was reading that and I was wondering if this language needed some change. Where it says in any case in which a public or private entity possessing the power of eminent domain attempts to purchase real property in lieu of condemning it. Now, do we want to say that or do we want to say that where there is condemnation proceedings or some other language which might soften that up. That gets over your point. Now this is only to apply to condemnation proceedings. I had another case out here where a school district is. A fellow had an odd shaped parcel and this piece could fit in to square up the parcel for the school. The fellow was building a house on it, and they wrote him a letter and told him to cease building his house. He asked me what to do, I told him to tell them to go jump in the lake. He practically finished his house and then they brought condemnation proceeding. The jury gave us a verdict of \$7,500 and the school district thought it was too much and they wouldn't buy it so then they paid \$1,750 for (laughter) and the man still owns his land. Now, that's the type of thing we are trying to get at. In your case, they could have come to the man and said we would like to buy your land. They wouldn't have to make him an offer.

CHAIRMAN: Well, Senator, I think there is a point here insofar as the attempt to purchase real property. It might be too broad, I was wondering maybe you'd like to go back to the first part of the original bill where you said "if the plaintiff in any eminent domain proceeding." That was really the intention, as I remember it.

SENATOR DESMOND: That's right. I was surprised to see this language here. I don't know how or when this got in, apparently it was further amended in the Assembly on June 11. Now, whether that's when this language got in there or not, I don't know.

CHAIRMAN: Could have been, but if—

SENATOR BUSCH: Well, but that goes—it might be a situation where there won't be any eminent domain proceedings.

CHAIRMAN: I guess that's how the problem arose, that's right.

SENATOR DESMOND: There are a lot of cases, Jim—

SENATOR BUSCH: I think something should be done about changing this language though, so it would apply only to those situations where eminent domain might ensue. There's one other thing I would

like to say about this. I believe the language goes a little bit too far here where it says that such written offer must itemize the various elements of damage. I think that that language should be changed to this language, that you specify the value of the land taken and the severance damage or you should use the language that is referred to in Section 1248 and make them itemize only those elements of damage. They've gone a little bit too far here.

CHAIRMAN: Let's discuss that for a minute. How about if you put in there, "must itemize various elements of damages as set forth in Section so and so, Section 1241 of the—"

SENATOR DESMOND: No, if you have noticed the first bill here now, this thing's been changed a little. I've never paid much attention to it, but the first bill says, "must itemize various elements such as land, improvement or other damages that do comprise the total amount of the offer." Now this says, "itemize the various elements of damage." They've stricken out the "improvement." Actually, the rule is it is the value of the land with the improvements. That's the only rule there is anyhow if they're taking the entire parcel. If they're taking a part of it, it's the improvements that are on that part.

CHAIRMAN: The amended bill is changed considerably.

SENATOR DESMOND: It is changed considerably over the original bill. I don't know how that language got into it, whether the members of the Assembly Judiciary Committee put it in or whether somebody suggested it or what. I would be perfectly willing and I think that it would accomplish what should be accomplished here and that's only in the case where there are actually condemnation proceedings.

MR. BOHN: Well, in that connection, Mr. Chairman, may I ask a question?

CHAIRMAN: Yes, Mr. Bohn.

MR. BOHN: It is my general understanding that a comparatively few of the agencies involved have the right of immediate possession and apparently it is the highway people and sewer easements and a few things of that sort. And as to those cases, I am assuming, without knowing, that they nearly always start the proceedings by a condemnation action just to get their right of possession. But I'm thinking in terms of some of the other state departments where it has been said that they never make a firm offer and that they induce the property owner to agree to a figure which the property owner assumes is the figure which the State is willing to pay and then when it gets to the Allocations Board or somewhere else they notify the property owner that they are sorry but they just can't pay that amount.

I have a specific case in mind. There's a state agency wishing to acquire a piece of property in which a client of mine is interested. An offer, in substance, has been made by the State, which is acceptable to the owner. However, the owner must spend very, very substantial amounts of money to clear his title. And he is called upon to spend that without having any firm offer because the negotiator for the State made it perfectly clear that he couldn't bind the State to this amount. He said, in effect, "you go ahead and put your deed in escrow and we think we can get this amount through for you, but we are not sure we can do so." I gather that there have been a good many instances when those figures have been changed. I am just wondering whether,

if this is limited to condemnation procedure, whether there would be any protection of any kind in a situation of that sort, which is the same one you are bringing up with the school districts.

MR. LARSON: Yes, well, sometimes the school districts do make inquiries of several property owners in an effort to determine approximately what they could arrive at in a selection of a site and to choose between two or three sites as to cost. Under those circumstances they may go to the Allocation Division or they may go to the State Department of Education, who would tell them the site is unacceptable. A lot of times those people are just under the gun as far as time. They think that condemnation is a bottleneck, as it were, but they are forced on time.

SENATOR DESMOND: You are talking about the great majority of cases that are—there is never a condemnation action filed, aren't you?

MR. LARSON: Yes, most—

SENATOR DESMOND: The great majority of cases in the State Highway Department too, I would say, within my experience or observation, is acquired without going to court certainly. And lots of them, of course, they can't acquire without filing a suit. They've got to file a condemnation, don't they?

MR. RHYNER: No sir, Senator, we can acquire without.

SENATOR DESMOND: Some agencies can't acquire without condemnation and I didn't know whether you were one or not. The great majority of your cases you file, and of course, you have to file where you take immediate possession.

MR. RHYNER: The great majority of our cases, I believe, we do not file.

SENATOR DESMOND: Do not file?

MR. RHYNER: If the committee likes, I will get statistics on that.

CHAIRMAN: As I remember, I think we had some statistics on the majority of the cases not filed.

MR. LARSON: There are very few. I think our district files on most all other cases when they are going down through natural water courses and washes and so forth. The majority of our other cases are not filed. The school districts buy a majority of their property without ever seeing us. They don't talk to us as far as condemnation. They just don't associate us with condemnation until they reach a point where timing-wise they need the school right now. Under those conditions, a section in the eminent domain section setting up a procedure is sometimes hard to apply to a situation where it is just an out and out purchase. The school boards write a letter, and we have had this situation happen a lot of times. The school board will write a letter and tell the owners "we are desiring to put a school site at such and such a location at a meeting of the board of so and so, would you please show up and we will discuss it at that time." All those go in the field of negotiations. These school districts don't have right-of-way agents. Most of the acquisitions in those types of situations is by a business manager whose business managing is school contracts and works with curriculum and things, or a superintendent. It is just the Superintendent of Education in charge of business. They don't have well set

up engineers, they don't have any engineers, they don't have any land department.

One school we had a lot of trouble with two years ago was the first acquisition in 25 years for that particular school district. The one thing they did is they just wrote letters that said "we have had it appraised at X dollars, take it or leave it." Now, that would have complied with the section, it would have been an offer, but that isn't the way, on a matter of public relations, to handle your property acquisitions and we feel a good share of it is public relations and getting along with the people, convincing them first why you need the site and we have very little trouble with opposition as to our site. Making it on a just basis, you don't want the situation to come down to where they just send a letter, this is it, that's all.

CHAIRMAN: Gentlemen, let's see whether we can't resolve this. Senator Desmond, I think even the language in the first bill is subject to question. Perhaps, the number of the first bill is 2531, page 243. I think perhaps that was why there was an amendment, because it says "in an eminent domain proceeding" and then it says that "any offer before the eminent domain proceedings" so evidently that was one of the difficulties. I was just wondering whether we couldn't get a definition in here to cover those situations in which land is taken for public use. I wonder whether you couldn't incorporate the definition of condemnation into this, because as I understand it, this is intended to cover the situation where you have your eminent domain and also negotiations prior to eminent domain. Because in most instances you don't go into the action for eminent domain anyway. Now, is that a correct statement?

SENATOR DESMOND: I think perhaps this is intended to cover an uncertain situation that is particularly applicable in the Highway Department, where an individual will come in and the land owner will come in and want some legal advice on a negotiated deal that the right-of-way people have taken up with them. One of the questions we ask them is, "Have they made you any offer?" Oh, they don't know, there has been nothing firm, nothing they can talk about. Well, it's pretty hard to advise a client under those circumstances because you actually, at least it is our policy to find out, after you find out what they want to take, to have an appraisal. Now, you don't know and I don't know, certainly, as to what the value of the property is without some reputable appraiser giving me an estimate of what it's worth, so I have no way to advise the client. Now, if they were compelled to give them an offer I think it would be helpful to the client, it would be helpful to everybody involved. The offer may be, if you know it is a reliable offer, may be substantial, it may be all the property is worth, therefor, you would advise them to accept it rather than to go into a condemnation suit. That's the purpose of the bill.

SENATOR BUSCH: Use this language and say those cases in which an action in eminent domain will lie.

SENATOR DESMOND: They would in all cases and they wouldn't reach the point that this gentleman's talking about.

CHAIRMAN: Let's take that point and read again the first sentence of the second bill on 244. I think upon rereading that you may not have the objection—in any case in which a public or private entity

possessing the power of eminent domain, now that limits it to only those agencies which possess the power of eminent domain. That's the limiting factor that I think is agreed should be in there.

SENATOR BUSCH: Well, just a minute though. If it applies to them that applies to the State, it applies to the school districts and it would apply to any transaction they might want to enter into regarding the purchasing of property. We don't want that in there.

CHAIRMAN: No, now wait a minute. You have to go on and say "attempts to purchase real property in lieu of condemning." Isn't that a limiting factor, wouldn't you agree that that was a sufficient limiting factor?

MR. LARSON: If the public body is determined to take or make a finding that they are going to take some property for a public use, any purchase would be in lieu of condemnation. If they can't sell it. So they would naturally—

CHAIRMAN: Have you any suggestions of any language which would take care of that objection?

MR. LARSON: My suggestion would be the one that was previously suggested by Senator Busch or Senator Desmond, one of them, "after an action in eminent domain."

SENATOR DESMOND: That wouldn't cover the situation. Take for instance, I'll give you—take the idea of the redevelopment situation in the City of Sacramento. The department, under certain circumstances and the commission, can exercise the power of eminent domain. I think they have only brought a half dozen suits and they've purchased a lot of parcels of property and negotiated one without a suit. They came in with a firm offer, I had appraisals made, we were so close, the appraisal was so close to the offer I advised the client to take it. Now, if they wouldn't have come in with a firm offer how would I have been able to advise the client?

CHAIRMAN: Let's go back to the question here about the counties. Now if any property is obtained by any school districts or by counties they must find a public benefit, mustn't they? And if the owner does not wish to sell then they must proceed under eminent domain. All right then, I think we ought to cover those situations.

MR. LARSON: My objection is that most of these bills are geared to operate when you have an organization that is primarily designed to operate in the field of property acquisition and eminent domain.

CHAIRMAN: All right, but the same thing still applies. It doesn't make any difference who is handling it. In my county the district attorney handles it for the school districts. You've still got the same type of situation and I think the same thing applies, certainly, if there is going to be an offer, we want the offer in writing so that the condemnee knows just exactly where he stands, so the district attorney can't say, "Well, I offered you \$5,000 yesterday, but I went back to the school district now and they're only going to authorize me \$3,500." Then you've got to go back to your client saying, "I'm awful sorry but the offer doesn't stand anymore." This is my personal opinion. I think that the district attorney under this, if this became the law, would then be on notice that he's not going to make any offer unless it's in writing, unless it has been approved by the properly constituted author-

ities. So I think—I still don't think that your objection to this bill is valid.

SENATOR DESMOND: The more I read it the less I think it's valid too.

MR. LARSON: Well, we'd have no problem (noisy interruption). That isn't our objection.

SENATOR DESMOND: All right, what difference does it make in your case? For instance, if you could give the example of the school district. What difference does it make whether you go out and negotiate with the owner of that land or with several owners of the land which you propose to acquire for a school building and talk to them or you put it in writing?

CHAIRMAN: Yes, it's the same thing.

MR. BOHN: May I ask another question, Senator?

SENATOR DESMOND: You're doing the same thing, aren't you?

MR. LARSON: Oh, we have, as far as I know, Mr. Day may correct me, but we've never had this particular problem that gave rise to this bill and that is a switching back and forward on offers with the exception of a situation where maybe the local allocation division would turn down the allocation of funds.

CHAIRMAN: But I've had the experience.

MR. LARSON: Well, I realize that. The allocation division recently, and they've changed back now all of a sudden without warning to anybody, suddenly stopped paying anything in excess of the highest appraisal that could be submitted on that property. That left several school districts and we had three or four rather large acquisitions.

CHAIRMAN: Any written offer can stipulate whatever the conditions are and can be prospective and so forth, as long as it's in writing, as long as everybody knows where they stand on the matter. Mr. Bohn, you had a question.

MR. BOHN: I'm wondering if there isn't a valid distinction between two types of situations. In the case, for example, of the acquisition of property for school districts, I think it's a fair assumption to make, that in many instances the property owners themselves are most anxious to sell a particular piece of property for a school district and the matter is subject to decision as to which is the proper site and how much they can afford to pay and so forth. But the other type of case is where, and this is the type of case it seems to me where the protection is needed, and that's the situation where a property owner is perfectly happy where he is. He's perfectly happy with what he's doing. He's owned a piece of property, he's planned on it for whatever his plans are, whether it be a home or for business reasons, and then along comes an overriding public need, so that against that man's will and whether he likes it or not, his property is simply physically taken away from him. Whether he likes it, whether it's done by threat of condemnation or whether it's done by the actual condemnation itself.

In that class of case you would be dealing with roadways, you would be dealing with sewer easements, you would be dealing with water easements and that type of thing, and in some instances school properties, where a school must go in a particular place. But I would normally think in the case of schools, for example, there would be more flexibility. Where this man's property is simply taken away without his will, then

isn't that the sort of thing that's really trying to be hit here? And wouldn't many of your school cases come in the former class where it wouldn't really be involved because you'd have people pushing to sell?

MR. LARSON: Oh, you may have that situation, yes. The only problem is we'd have to circulate to the districts, I guess, which is a rather simple process. Tell them any time you're negotiating for property and you finally arrive on a price you must submit it in writing.

CHAIRMAN: That's right.

MR. LARSON: Maybe nobody raises a question, you have no problem. I'm surely in, and with all deference to the preceding speaker, we have no objection to letting the property owner know what he's entitled to receive because we follow just the policy——

SENATOR DESMOND: Not what he's entitled to receive, but at least what you think he's entitled to receive when you make the offer.

MR. LARSON: Well, I'm speaking in terms of the physical receipt of an offer and not how much money he's going to receive but he's entitled to know how much we think about him.

SENATOR DESMOND: That's right.

CHAIRMAN: Gentlemen, I think this is resolving itself, unless there are further questions from that standpoint I would like to go back to this question of various elements of damages. Senator Desmond, would it perhaps be possible to take this second bill and just insert in there as provided in Section 1246 or 1248?

SENATOR DESMOND: Well, I don't know. That's bothering me a good deal, that's why I'm looking at it, because you can always get into an argument over what benefits you are going to get. For instance, the Highway Department will say, "Well, the freeway is going to benefit this property." The landowner will say, "I used to have access to the highway, now I don't have access any longer, I have to drive down a secondary road for a mile or a half of a mile or whatever the distance might be before I can get on the highway." So there is no benefit. Theoretically, the State always, as a matter of theory, always says you are getting some benefits by reason of the construction of this improvement. You would have a heck of a time, I'm afraid, following that code section and trying to figure out what benefits you have.

SENATOR BUSCH: You would have a heck of a time complying with this section here too, wouldn't you?

SENATOR DESMOND: You might with this elements of damages. I don't know, maybe that's not a very practical thing.

SENATOR BUSCH: I don't think it is.

CHAIRMAN: Well, Mr. Rhyner, do you have any suggestions? You've got an agreeable committee here.

MR. RHYNER: I appreciate the offer, Senator. As far as that one particular point is concerned, certainly if it were brought out that the various items of damages were as set forth in that code section I think that would clear it up. It might be that we would feel that there were benefits and some would not feel that way but that would be our fault.

SENATOR DESMOND: Now wait a minute, that code section is predicated entirely upon the theory that you are in trial. Those are the things the court has to do, that's not what you are required to do in purchasing property. You are not required to do that at all. It's covered by the manual.

MR. BOHN: What section is it in the manual, Mr. Rhyner?

MR. RHYNER: I didn't know it was in the manual.

SENATOR DESMOND: There is a provision in there. Give them the highest amount possible or words to that effect.

SENATOR BUSCH: Why couldn't you just specify the severance damage in general and the value of the land as taken and just have those two items? Why do you have to itemize them?

CHAIRMAN: Well, let's get another suggestion. Would you have any objections to using the original bill, "various elements such as land, improvements or other damage that do comprise the total amount of such offer or offers"?

SENATOR BUSCH: You're right back where we are in the amended bill, because other damages include everything.

CHAIRMAN: Well, at least we have started with land improvements, now what else should go in there?

SENATOR DESMOND: I think if you—personally, now this is the thought I've got, "shall be made in writing to the landowner," and leave out the word etc. Leave that all out "in writing to the landowner and all offers must be dated and signed." Now, if he gets an offer then of \$25,000 and that's what they are offering and the physical proof of any other damages is another question. Have they considered that or not, but at least you have before you the fact they have offered X dollars and then you can start from there. You can determine whether commensurate with the value of the land when you consider his legal rights. Why isn't that sufficient?

CHAIRMAN: I think we'll really get at what the purpose of the bill was and that is, at least if there's an offer that you know it can be relied on and that's it.

SENATOR DESMOND: Why do you have to break it up. I don't see—

CHAIRMAN: I think you're right. Then it is your suggestion, Senator, that as the author of the bill, that after the word "landowner" you strike the following language, "and such written offer or offers must itemize the various elements of damage that do comprise the total amount of such offer or offers."

SENATOR DESMOND: You simply say "that shall be made in writing to the landowner and all offers must be dated and signed by an employee of the offeror."

CHAIRMAN: Is that acceptable to the committee?

RESPONSE IN UNISON: Yes.

CHAIRMAN: All right, then, that answers some of your objections, Mr. Rhyner.

MR. RHYNER: That resolves that problem I think, Senator.

CHAIRMAN: Mr. Bohn, will you prepare an amendment. Now, gentlemen, we have the bill before us and the question is "Shall we recommend to the main committee approval of this bill as amended?"

SENATOR DESMOND: Let me ask this. I would like to know—I don't know whether you would commit yourself or not, either of you gentlemen, we have the bill before us and the question is, "Shall we opposition? Would the bill be satisfactory with that amendment?"

MR. RHYNER: Senator, it is my understanding that we make an offer in writing before we go to trial. I don't want to commit the depart-

ment because I don't know even who is going to be director when the Legislature convenes in 1959. I don't even know who is going to be Governor. (Laughter.) Believe me, I don't. I can't commit the department.

SENATOR DESMOND: Let me say this, when you are ready to go to trial, when your department, and I've gotten into rough negotiations and it is time to make something firm, that I, as an attorney, can show the landowners and say, "Now this is definitely what they have offered." You ask them to do it and in most cases they'll do it. They will even go beyond that . . .

MR. RHYNER: We aren't supposed to submit a written offer, Senator. They have slipped up. It is against regulations.

CHAIRMAN: I have never known of a written offer under those circumstances, Mr. Rhyner.

MR. RHYNER: I don't know the cases of which you speak, Senator, but they are supposed to do this.

MR. BOHN: May I ask a question, Senator?

CHAIRMAN: Yes, Mr. Bohn.

MR. BOHN: Is this a fair statement, Mr. Rhyner? That the amendments to the bill remove at least your major objections to the bill, is that correct?

MR. RHYNER: They remove the matter of what we consider to be improper methods of appraisal from the bill.

MR. BOHN: And then with the remaining substance of the bill—

MR. RHYNER: You may call it administrative problems; now, I want to add that.

MR. BOHN: The basic requirement of making the offer in writing is generally not objectionable in accordance with your present policy. Is that a fair statement?

MR. RHYNER: Let me say this. Before we go to trial we make a written offer, but in the preliminary stages of negotiation, as I understand, it is not done. The negotiator goes out and talks to the property owner and it is not firm from either side. I don't think.

SENATOR COOMBS: He always tells the property owner how much the attorney is going to charge them and rob them and all that stuff, too.

MR. RHYNER: We are instructed not to do that also, Senator.

SENATOR DESMOND: But they do it.

SENATOR BUSCH: I would like to know what is going to happen in case they don't comply with this section. Anything?

CHAIRMAN: That is the \$64,000 question.

MR. RHYNER: It may be that the negotiator can say, "Well, I just can't make you an offer."

SENATOR BUSCH: That depends upon whether the proceedings are invalid—

CHAIRMAN: I think the department will make a reasonable effort to comply with it if this becomes a law.

MR. BOHN: As I read this bill, there is no language here which requires all preliminary negotiations to be in writing. As I understand it, it's merely the point that if it's going to be an offer it should be in writing. I wouldn't think it would preclude all sorts of formal conversations preliminary to the point of the offer itself, so I am wondering if it is going to cause anywhere near the problem you have in mind.

SENATOR DESMOND: Let me read out of the Right-of-Way Manual here. Maybe this cures the situation. (laughter) This is on page 49 and it says, "staff appraisers in visiting the premises shall extend every courtesy and consideration to the affected property owners, keeping in mind the mental attitude of the property owner and the problems with which he may possibly be confronted because of the effect of the proposed highway improvement that will necessitate the taking of a part or all of his property. Under no circumstances shall the appraiser express an opinion to the property owner or as to his opinion of the condition of the building, improvements or any possible value that will be placed upon the property upon completion of the preparation of the appraiser's report and so forth."

So the fellow has no opportunity to get any except what opinion he can get from his own or somebody that he hires.

MR. RHYNER: May I comment on that, Senator, very briefly. Our method of operation is broken into two parts. First of all, the appraisal is made by the appraisal section. Then they leave it and it is turned over to a negotiator. The two are kept separate, completely. That division occurred after we had some trouble down South and our negotiators were also appraising and a couple of them ended up in San Quentin, so we have broken them up separately. The appraiser is not to mention costs; the negotiator is. That is the reason for that separation.

CHAIRMAN: Gentlemen, I think we must move along. I think the question before the committee is whether the committee wishes to recommend approval of 2531 as amended. Are you ready for the question?

CHAIRMAN: All those in favor say "Aye."

RESPONSE IN UNISON: Aye.

CHAIRMAN: The bill is approved. Now, gentlemen, it is five minutes to twelve, I don't think we ought to get started on anything else. We will recess until the hour of 1.30.

(Recess.)

CHAIRMAN: The committee will come to order. This is the afternoon session. The Senate Interim Judiciary Subcommittee on Real Estate and Probate, May 5, 1958, meeting in Room 3191 of the State Capitol. I think the next item of business that we have is S.B. 2537, page 239 of the Fourth Progress Report. This is also one of Senator Desmond's bills. The bill provides that if the plaintiff in condemnation proceedings is the State of California, such plaintiff shall be precluded from introducing into evidence any plat, map or diagram without proof of having served a copy of such plat, map or diagram on the defendant or his attorney at least five days prior to the time of trial. I believe there was an amendment. The amended bill is also on page 239. Mr. Bohn, do you have anything that you would like to report on this bill?

MR. BOHN: I have no special comment at this time, Senator. I was hoping that we might also hear from Mr. Rhyner on this bill. This is one of the bills that the Governor vetoed and the reason for his veto, he stated, was that it was an unwarranted complication of procedure.

CHAIRMAN: All right, Mr. Rhyner, would you like to comment on the bill?

MR. RHYNER: I just have a copy of the amended bill. I think they are substantially the same. As I understand the reason for this bill, it was felt that the property owner, in order to properly prepare for his

case, needed to know the part of the property taken in its relationship to the whole parcel and needed to know the construction of the improvement in the manner proposed because that's one of the items of damage under condemnation law and it was felt that he could not properly prepare his case unless he was notified of that in advance.

Now I believe, as I remember, that with the exception of the 15-day provision in the amended bill that the rest of it was drafted actually in our office, that's the amended copy, in order to more fully comply with our operations. Let me stress again, gentlemen, that this bill is not going to be fatal to our operations at all. I want to stress that it is not as important as some of the other matters that have been pending before the Senate Judiciary Committee. But I would like to point out one or two things for the committee's consideration. Since this bill was enacted, or at the same time that it was enacted, the discovery proceedings were enacted into the Code of Civil Procedure. Now, those proceedings give wide scope to written interrogatories, whereby full and complete information can be gained. Moreover, we have the pretrial procedures now whereby the parties meet at least five weeks ahead of time before the trial, five weeks, mind you, and discuss this whole thing in the judge's chambers. Now, it may well be that those procedures would be more satisfactory to the defendants than this. This calls for the service of a plat map and it has been my experience, and I think the rest of the fellows in our department, that if you are going to determine the construction of the improvement in the manner proposed you need more than that, usually, if it is an overcrossing you have to have cross files, you should know the grade and so on. It is helpful to talk to the engineers and it may well be the discovery proceedings, the pretrial proceedings are more, are better for this purpose.

I would like to call one other thing to the committee's attention. This has the 15-day provision in it, meaning that the map has to be served at least 15 days before trial. We settle quite a few of our cases in that period before trial. I don't know whether people get the courthouse shakes or what, but we settle them then and these maps are not cheap to prepare. The bill was originally introduced with five days, should be served five days before trial, and if the committee considers the enactment of the bill we would like to suggest that the five days be replaced. It will result in savings to the department and still give the defendant notice.

We can live with it, we can make these maps, but I am not sure that it's an expense that should be placed upon us that will give the property owner the protection that he desires. I talked to some of the fellows in the office about inquiries that were made in pretrial hearings by attorneys regarding construction of improvements in the manner proposed and apparently, they are not too many. The last pretrial hearing that I personally attended the attorney wanted to know about one map that we had prepared previously and I sent that map to him. Those arrangements were made in the pretrial hearing. It would seem to me that if the property owner requests it, then the department should and it is our practice so to do. Mr. Miller, Senator Desmond's law partner, was up in our office, up in the highway's office, examining certain cross files, certain maps which is our practice to let the public examine.

CHAIRMAN: Mr. Rhyner, on the basis of your procedure in your office wouldn't it be possible to provide this map at the time of filing the condemnation suit upon request? May I amplify the experience that has been encountered by some of the people in these condemnation proceedings—there is a description in the complaint and many times there is an accompanying map. The experience has been that the accompanying map is not detailed enough so that the owner can take this map and actually go on the grounds and go over the ground to determine the exact boundaries of the property that is to be taken and I know on the basis of my personal experience, I have had to send my owners out sometimes two or three times in order to know exactly what portion of the property is going to be taken. As far as I am concerned personally I would like to see this go beyond the 15 days before trial, if at all possible, it seems to me that the owner should know what property the State or the condemnor intends to take or is going to take.

MR. RHYNER: Well, it is my understanding, Senator, attached to the complaint, is an exhibit, which outlines the portion of the property to be taken. In other words, the freeway right-of-way line. Now, maps are maps, and perhaps an engineer is needed to detail that out for the property owner, certainly, I think that it has been our practice that if the inquiry is made at our office that we will certainly outline it for them.

CHAIRMAN: Mr. Rhyner, let me point out what the problem is. You send out your survey crew. The crew makes the survey as to the property that is being taken and I don't know what department it goes through, but finally the right-of-way agent gets a description and many times the description is different than the map that is attached to the complaint and as a result, it is very difficult for the owner of the property to know just exactly how much property is going to be taken. I'm talking now on the basis of practice.

MR. RHYNER: It may be subject to demurrer, Senator. As I recall the law——

CHAIRMAN: Really, this is only a practical problem. It isn't a question of law at all, and as I remember the testimony that was given before the subcommittee which heard this bill was that there are so many variations sometimes until you actually come to trial that at some place along the line the owner should definitely know what property is going to be taken.

SENATOR BUSCH: Don't you think that pretrial conference takes care of the map?

CHAIRMAN: No, Senator, because unless the owner has an opportunity to have a map with the points on that map, you know, the distances and the points and the stakes in there, he actually doesn't know exactly how much of his property is going to be taken. The owner himself has to actually go down there and walk over that property and see the stakes so that he knows just exactly how much of that property is going to be taken.

MR. RHYNER: You mean he needs to see the stakes on the ground, Senator?

CHAIRMAN: Absolutely, that has been my experience in every one of these. Every one of them. I don't think I have ever handled one in which we didn't have at least two or three conferences and sometimes

the department would have to come up and make a resurvey and so forth, until we could actually determine how many square feet, in many cases, is actually being taken by the State. This is a practical problem and this is what we are trying to get at by this law—this proposed bill, when it says showing the boundaries of the entire parcel indicating thereon the part to be taken. Now, that isn't always true.

MR. RHYNER: It always indicates it on the map, Senator, it doesn't indicate it on the ground. When the stakes are meted on the ground they are sending out a survey crew.

CHAIRMAN: Many times they have a survey made and then your design department changes the amount of property that you need and the map is not the true representation of the property that you are going to take. It is a practical problem.

MR. RHYNER: If we're going to take more property than is described in the complaint then we have to amend the complaint, Senator.

CHAIRMAN: That's right.

MR. RHYNER: And the amendment to the complaint should include an amended map which will show the new boundaries. I'll certainly concede that changes in design are made. There is no question about that.

CHAIRMAN: This is merely getting at the point that there should be a 15 or 5 days before the trial that the condemnee should know just exactly how much and what property is going to be taken and not go into court and ask to amend the complaint to either take less or to take more and there you are. You are at the trial and whether more or less is going to be taken might have a material bearing upon whether there was a settlement or not. I think with this type of situation you could get more settlements.

MR. RHYNER: My point is that if more property is going to be taken it's necessary for the Highway Commission to pass another resolution. It's necessary to amend the complaint. So that I would assume that at the time of pretrial hearing all the issues are supposed to be brought together at that time and all the amendments to the complaint should have been made at that time. If not, then I think that a continuance is in order.

CHAIRMAN: Well, Mr. Rhyner, that is as a practical matter. You are entirely correct from the legal standpoint. But as a practical matter, that is not the way it works out, because many times you come up to the trial and you find out that there is a variance between the description and the map that is filed with the complaint and the amount of property that the State now comes in on the day of trial and wants, due to change of design.

MR. RHYNER: I wasn't aware that that happened many times, Senator. As I indicated, it would seem to me as a practical matter that we can't take any more property than what the complaint asks for, so we wouldn't dare go to trial.

CHAIRMAN: That's right, so you come in and you ask for an amendment on the day of the trial. Let me point out some other experiences.

SENATOR BUSCH: You can always object to that. You can ask for a continuance if you want to.

CHAIRMAN: That is true, and not only that, Senator, but depending upon that change there, maybe the owner would have settled if it was less and so forth, and here you go to trial. There's no reason why the State can't make up its mind how much property it needs before they go to trial. Now, that's the long and the short of it.

SENATOR COOMBS: Well, let me interrupt you just a minute. Isn't it an overall experience we all have on these cases—every once in awhile some fellow from the department, and you can't agree on something, wants to punish you a little bit, changes things around a little bit. Now that's rather a nasty assertion, but I think it's true.

CHAIRMAN: I've had experience where I've had to send my owner out three times and changes in the description were made twice until everybody knew just exactly what property the State was going to take.

SENATOR COOMBS: Well, for instance, I had a case of 1320 feet paralleling the highway—cient's property, and your department allowed them—took all this frontage, allowing him a 15-foot ingress and egress. Now, that was just to punish him, that was all. It's a crime.

MR. RHYNER: I am not familiar with that situation, Senator. The basis for any changes or the basis for opening should be on an engineering and economic basis and not on any basis of punishment. I don't see how this bill here would correct such a matter if it arose.

MR. BOHN: As a practical matter, Mr. Rhyner, doesn't the department always have a complete map of what they're going to do before they get to the final stages of negotiations? Don't you actually have those maps on file in your office?

MR. RHYNER: Not on one flat piece of paper. This section refers to what we call in condemnation a before and after matter. When you try a case you show the jury one big exhibit map which is the property in its before state, that's usually the first exhibit. Then you show them another big exhibit map, which is the property in its after state. In other words, after the freeway has come in there and taken part or all of the property. In other words, that wraps it up in one package and it isn't spread out in these engineering maps, a part here and a part here and so on. Now, we also, at that time, put an engineer on the stand and he has his cross sections and so on and they may be a block (interruption) and if there are changes of grade or if there are elevations due to an overpass; all that is explained to the jury and everybody in the courtroom. Now that gives you the complete picture, you see, of what is going to happen at that time. My point is that it would seem to me that if the property owner is interested in that ahead of time, all that information, he could either request it at pre-trial or through interrogatories and discovery and find out and we would only have to do it in those cases when——

CHAIRMAN: Now, wait a minute, Mr. Rhyner, why is it necessary; this is the essence of a condemnation suit: How much property the State is going to take. Now, this is the whole basis of the lawsuit. Why should a defendant have to go to interrogatories and so forth to find out just exactly how much property the State is going to take?

MR. RHYNER: He shouldn't. The amount of the property taken should be set forth in the complaint and in the exhibits attached to the complaint.

CHAIRMAN: But as a practical matter, I have to say in every case I have handled that hasn't been the situation. They've had to have resurveys, there have been changes and so forth and you come right up to the date of the trial and you still don't know the basis for your lawsuit. This proposed bill merely says that 15 days before you go to trial the State should be able to serve the map upon you and say, "Now look, this is the property, so many feet here and so many feet there and so many feet there, etc."

MR. RHYNER: That should be set out as an exhibit to the complaint too, Senator.

CHAIRMAN: That's true. You file those with the complaint, but as you have indicated, many times the survey crew makes the survey and it isn't in keeping with what the design department has laid out, so the design department says, "Now look, we need so much more or so much less" and then the survey crew has to go back again and give you an accurate description of what the design department wants. In the meantime you are up to the day of the trial.

MR. RHYNER: It would seem to me that at the time of pretrial, which is I think normally five weeks before trial, that those matters could be requested, Senator, and the court should so order and that should take care of the situation. If you do it earlier and then more changes are made by the department, you still haven't accomplished anything.

CHAIRMAN: No, and I think that's why the 5- or 15-day provision was put in there, to take care of that situation.

MR. RHYNER: I think that in a lot of instances the property owner, well, I know that they haven't requested that information, and if they haven't requested it, it just means additional expense on our part along with the trouble of sending it to them. This isn't one map that is being drawn, we are acquiring 8,000 parcels a year. We have 1,800 parcels, I believe, under condemnation. We spent \$140,000,000 last year in money for right-of-way and each change is requested on a geometric scale and so it means a considerable more amount of money.

CHAIRMAN: Let me give you an example. You know your regular maps with all of the data that you make available. I've been in situations where those maps have been changed three times before the day of the trial.

MR. RHYNER: Were you given that information of the change, Senator?

CHAIRMAN: No. After considerable wrangling and considerable difficulty and having to send my people out with each map and find out on that basis and ask that the engineers be there at the same time, and when the engineers and the owners were there they found out that the actual piece of property your department wanted to take was not the piece of property that was delineated on the map or described.

MR. RHYNER: That to me indicates the importance of having the engineer involved in it and the map and that's why I should think that interrogatories under discovery would be more binding and more clear and, of course, costs in condemnation are paid, that type of cost is paid by the State anyway.

SENATOR BUSCH: The attorney's fees are not paid by the State and you have a lot of work involved in taking out a bill of discovery.

You have to spend time in court and after all, you just add to the expense of the litigation to your client as well as the inconvenience to the attorney. I don't think that because we do have that remedy that that should be the answer to it.

MR. RHYNER: Let me state again that this is not going to be fatal to our program.

CHAIRMAN: Let me point out to you, taking Senator Desmond's situation here. What I am talking about is the whole property—here are the five acres that are to be taken. The difficulty is that you may have a meandering creek in here so that they have to come out here and get more property and so forth. Now, the owner, unless he actually goes down on the ground and actually runs the line on the basis of the stakes and the distances and everything else, on the basis of the information as provided by the survey crew, he really doesn't know how much property or where the property is that is going to be taken. This bill merely says that 5 or 15 days before trial that you should provide the owner with a map of the exact total amount of the property, that property which will be taken. I think it is very simple. I don't think it gets involved in anything complicated.

MR. RHYNER: But it doesn't send the engineer out to stake it, Senator. That's my point. If you need an engineer, too . . . It's a matter of talking with the engineers.

CHAIRMAN: No. The thing is that the survey crew goes out, don't they? Once you decide what property is going to be taken you send out a survey crew.

MR. RHYNER: That's normally the situation.

CHAIRMAN: That is number one. Then the thing goes to your design department and they check it over. Then they may find that on the basis—they go out on the ground and they need more property. So then they go ahead and they send a notice down to the survey crew and chances are the survey crew doesn't go ahead and make the re-survey and then you come up before the day of trial and you find out that nobody actually knows exactly what is being taken. Certainly, the owner doesn't. Gentlemen, the bill is before us. Is there anybody else who wants to add something to this?

MR. LARSON: I'd like to make just a few comments. Part of the problem is the fact that the right-of-way maps do show, under the code, they are only required to show the general location and the termini of the various roads. I don't know the experience and I am not too familiar with the state maps, but under our county maps we show the larger parcel with its rough outlines, but we do not show the entire larger parcel if it's big. We show the exact dimensions of the part taken and it is drawn to scale so maybe your map will show a small lot just about two by four inches and on that we include a line showing first, above the line, the number of square feet in the part taken and below that, the number of square feet in which we have, at that time determined to be the larger parcel, or the remainder.

Now, there is a problem, in some instances, as to what is exactly the larger parcel. If a map were served it would still require some negotiation one way or another, either at pretrial or some other place to determine exactly what the larger parcel is. Now, we in the past—I know I cannot personally have ever recalled any problem on this, of where the

people do not know where the part is taken. The size of it or any changes have all been pretty clear. We're going to leave out this two acres or that two acres and that brings up what I think is an important point, which is that this problem, if it does arise, and if the bill is adopted or recommended, is in your right-of-way cases. Now, I don't think it applies to the larger parcels. I would think it would be a lot better off in a situation where we do have engineers.

All our right-of-way cases are master drawn by engineers. It is done by the county in our situation and we have engineers and we have the maps and we would not have too much difficulty in drawing one of these, assuming we knew what the larger parcel was or what the other side contended was the larger parcel, but as far as the school cases, often times they do not know exactly where their proposed improvement is going to be. They're going to take 40 acres and put a high school plant on there and tell the State—again the State Department of Education tells them where they can put their school building. It would be impossible to do anything on a map except indicate a bunch of squares and say approximately in this location and that is not the type of situation where the construction of the improvement itself is going to injure the remainder.

CHAIRMAN: Actually, if you are five days from trial you have that information.

MR. LARSON: On a road case I think we should know where the right-of-way line is, where the sidewalk is and so forth.

CHAIRMAN: Five days before trial?

MR. LARSON: In cases five months after trial they don't know exactly where their school—their campus is going to be in some cases. In many cases they do know exactly where their buildings will be.

CHAIRMAN: In the cases I've handled they've always known.

MR. LARSON: In Los Angeles County we're faced with the situation of many of these school districts acquiring school sites based on projected income, I mean projected population increases and they know that, say in 10 years, they are going to need a high school site. They know that if they don't get it now it's going to get improved and it's going to cost a lot of money to acquire it if they wait until the improvement. They have set it up, they are acquiring them now, but, again, it is public relations that they put it on a master plan and then the man can't sell his property, it is going to be taken. So they have gone ahead on some of these programs and we have many school districts where we have six, seven or eight cases filed at the same day.

CHAIRMAN: But you know the exact boundaries of the property.

MR. LARSON: Yes, we know the boundaries of the property. This bill requires a location of the improvement in relationship to the remainder, that is what I was getting to, Senator.

CHAIRMAN: The improvement to be constructed.

MR. LARSON: Yes, that is what I was addressing my remarks to.

CHAIRMAN: Improvement to be constructed on the part taken in its relationship to the remaining property. I see.

MR. LARSON: On school cases we don't—oh surely, we know how much we're going to take and how much we expect to have.

SENATOR BUSCH: I don't think that is necessary in there.

CHAIRMAN: I don't think so either.

SENATOR COOMBS: I don't either.

SENATOR BUSCH: I move to delete that from the bill, if that's in order.

CHAIRMAN: Senator Busch moves that the words after the part remaining, the following words be deleted: "and the improvement to be constructed on the part taken in its relationship to the remaining property". All those in favor of the amendment say "Aye."

RESPONSE IN UNISON: Aye.

CHAIRMAN: Contrary. (No response.)

CHAIRMAN: Mr. Bohn, will you prepare the amendment? Under those circumstances you have no objections.

SENATOR BUSCH: There was some objection to the 15-day period. Do you want to change that?

CHAIRMAN: Yes. Mr. Rhyner, do you want to make any comments on the 5- or 15-day period?

MR. RHYNER: Well, only what I've said. We can do it either way that the Legislature asks us. It's a matter of expense, that is all.

SENATOR BUSCH: I think so, too.

CHAIRMAN: Is there anybody who wishes to make any further comments on S.B. 2537?

MR. BOHN: May I ask Mr. Rhyner a question? Mr. Rhyner, you have heard the bill as amended. Does that remove all or the major portion of your objections to this situation? As I understood your objections, you felt that a flat map, for example, would be insufficient to describe what was really needed in this deal and it required profiles and all the rest of it. Now, if I understand the amendment, that primary requirement of showing the location of the improvement which in your case might be an overpass or a bridge or a freeway. That has been deleted from the bill and what is now being asked for is a map which will show just the exact location of the property you are taking in relationship to the whole property of that particular owner. Now, if that is what the bill means, do you still continue your prior objections in the sense of extra work and so on?

MR. RHYNER: Well, I hesitate to use the word "objection"——

MR. BOHN: I understand that; "misgivings" is a better word. Let's put it that way.

MR. RHYNER: It is my understanding that that information is attached to the complaint and that the complaint is amended to include that information if we take additional property, so that in the case of our department I believe that this will be duplication. If I am in error on that understanding I think Senator Dolwig has a point.

CHAIRMAN: I must say I think, and with due respect to you, Mr. Rhyner, you are in error.

MR. BOHN: May I ask one further question, Mr. Rhyner? As I understand the real problem here, it is that the property owner and his attorney have an opportunity prior to trial or as soon as practical to check or recheck the ground requested by the department. In other words, now let me give you a specific case. There was a piece of property involved in a highway taking which happened to be on a knoll. The highway department had designed the highway in such a fashion that it would have taken a comparatively small amount of the property involved but would have taken a series of landscaped parcels and so

forth, which would have seriously diminished the value of the remainder. The survey crew came along in this particular case and no complaint had been filed, but it could as well have been a case of that type, and put out the survey stakes.

The matter went into consultation and the highway department then made a slight redesign which removed the problem and it happened in this particular case it was way off the property and there was no further problem, but assuming a situation where there was then a removal or a change of the location of the roadway to miss the most valuable part of the property, then it would seem to me that if the matter was still going to trial on the issue of damages, it would seem to me, for example, that the attorney for the defendant would want an opportunity to go out and get an engineer to actually check those figures to find out if, in fact, that in this particular case that 50 feet was extremely important, to actually have an opportunity to check those figures and check the location for errors and also, if I were the attorney, I would want the opportunity to show my client exactly where the improvement was going on the ground, because the average client would not be able to trace it out on a map.

I am wondering if that is not the real purpose of a bill of this kind regardless of what you have in your complaint, because the relationship of changes and of negotiations and of existing improvements to the legal description on the complaint no doubt could all be figured out by the defendant and the defendant's attorneys with a series of engineers. But as pointed out by Senator Busch, it simply increases the cost of litigation and, of course, in some instances, the total dollar value of what is involved might make it impractical for the defense to prepare those maps on their own motion. Whereas the highway department has the basic information to start with.

MR. RHYNER: Yes, if the change in design were made along that nature I would assume that the department had maps in the office which would be available to the property owner and that the property owner could take a right-of-way engineer out to the property and have it pointed out to him whether suit had been filed or not.

MR. BOHN: But the attorney is up against a situation of where I think he would have to be sure if this were a suit matter. He would not be able to rely in, let's say, stipulating to a judgment or executing a quitclaim deed. I don't think he would be entitled to rely upon verbal statements made by someone else. It would seem to me this thing would have to be related to the litigation or to the documents on file. I think that's what Senator Dolwig has in mind. Whereas, let's say in 90 cases out of 100 you won't make an error. In the other 10 cases you might and the attorney and even the property owner is in a situation where he would never know unless he had this material technically in front of him.

CHAIRMAN: Well, in your instance, I believe you stated that no suit had been filed. In that it would not apply. Had suit been filed and it went to stipulated judgment it is my opinion that before we could switch from this position to this position we would have to amend our complaint by amending the description of the property to be taken and that a revised map should be attached to the complaint. Now, that still

doesn't relate the map to the ground. We still need somebody to go out and——

SENATOR BUSCH: Well, that is true, but if you have it and you know you've got a definite map from 15 days before then you can take the map and go and relate it to the ground. I think that is the whole point.

CHAIRMAN: Well, that should be attached to the complaint, Senator.

SENATOR BUSCH: Well, it isn't though.

CHAIRMAN: All right, thank you Mr. Rhyner. Any other questions on this? Gentlemen, we have before us Senate Bill 2537. What is the wish of the committee?

SENATOR BUSCH: I move that we transfer on to the full committee the recommendation.

CHAIRMAN: As amended. All right, you have heard the motion. All those in favor say "aye."

RESPONSE IN UNISON: Aye.

CHAIRMAN: Contrary. (No response.)

CHAIRMAN: The next item is Senate Bill 2538 on page 251. Mr. Bohn, would you like to comment on this bill?

MR. BOHN: No, Senator, except to point out that this bill also was vetoed by the Governor and in this particular case he said that present law was adequate. The present law provides for the payment of interest from the date of possession and, as I understand the bill, it provided for interest from the date of the order of possession—the order for immediate possession.

SENATOR COOMBS: Mr Chairman, may I ask a question? The Governor's veto is the language of your department, isn't it? Or your objection in this particular case?

CHAIRMAN: This is addressed to you, Mr. Rhyner

MR. RHYNER: I gather that it is. (laughter)

SENATOR COOMBS: In other words, this is your objection, the Governor follows your objection.

MR. RHYNER: I don't remember that language, Senator. Frankly, in these bills of Senator Desmond's, these three bills here, well, let me put it this way, the director corresponds with the Governor on all matters which affect the operation of the department in connection with——

SENATOR COOMBS: Well, if it embarrasses you, I'll withdraw the question. I didn't mean to do that.

MR. RHYNER: I am perfectly willing to go ahead and answer your question, Senator. In connection with these three bills, we did not recommend a veto. On the other hand, we didn't particularly recommend that they be approved either, because we felt they were unnecessary. We just laid out the background to the Governor and that was the status of it. As far as that language is concerned I can't say.

CHAIRMAN: Would you comment what the department's position is? I am a little hazy on the genesis of this bill. As I remember it, the bill provides that if there is a court order for possession that the interest shall run from the day of the court order. Is that correct?

MR. RHYNER: Not necessarily. May I make one further remark in answer to Senator Coombs' statement? We are not the only agency

that comments to the Governor on bills. My understanding of the law is that in connection with interest on immediate possession that the interest is to represent the loss of use of the property. It is compensation to the owner for loss of use of the property pending trial of the action. In other words, suit is filed, the department at one time or another asks for an order to go out and take possession of the man's property to build a public improvement. Now, they may go out the same day that they get the order. They may, for various reasons, go out a month later.

In any event, the Metropolitan Water District case held that from the time of possession, from the time that the agency took possession, that man should be reimbursed for the loss of use of his property and that interest was a good measure for that reimbursement and they awarded interest in that case. Now, it's case law, in other words, that established that principle, not statutory law. This bill, instead of making that the standard, in other words, the loss of use of possession would merely say that from the date of the court order the man would have interest on his property and it changes that standard. We have——

CHAIRMAN: Pardon me, may I interrupt, Mr. Rhyner. Does it say court order? Yes, from the date of said order.

MR. RHYNER: That is the essence of the bill. It changes the standard from the loss of use of possession to the mere obtaining of the order.

MR. BOHN: Take this type of situation. Suppose that the department needed a piece of property but could not be sure of the title and therefore would not feel warranted in paying over the money at the time they obtained the court order, until the title were cleared as to the ostensible owner and somebody else who might have an interest. In that situation you would think that it would obviously be unfair to charge interest from the date of the court order rather than from the date of actual possession. It is not a suggestion, I think it would be so.

SENATOR BUSCH: You are talking about possession. I guess you're talking about physical possession, is that right?

MR. RHYNER: Yes, sir, that is right. At the last session of the Legislature the Legislature passed a law saying that we could not take possession until three days or at least three days after we obtain the order. We have to serve a three-day notice on the property owner to give him a chance to prepare for the possession. This would make us pay interest for that period also.

SENATOR BUSCH: You know, that decision of the court kind of amazes me, because I don't consider interest to be reimbursement for loss of use of the property. After all, the property is going to be taken and when the court makes an order for possession that deprives the owner of his property and it seems to me that the only purpose of paying him interest is to pay him for the fact that he has, the money's on deposit or say, in some cases, on deposit, other cases not, paid him for the fact that he doesn't get control of that money until the decision of the court or jury has reassessed the value. I think that is the only reason for paying any interest, not because there's a loss of use of property, because you haven't used his property anyway.

MR. RHYNER: That was the basis for the court decision, the loss of use of the property and they said that interest was a good measure.

CHAIRMAN: The rationale was though that the money, theoretically, there was adequate money up there, deposited in the court and since the owner was not able to have the use of that money that he is entitled to the interest on that money. That was my understanding.

SENATOR BUSCH: Surely, that's logical, but for the loss of use of the property, I don't see—he is going to lose his property anyway. He's lost his property as soon as the court makes the order of possession.

CHAIRMAN: I think the issue here is whether it is desirable to have interest paid from the court order or from the time of possession. I think that is what we have to decide here.

MR. RHYNER: Let me stress again that this bill is not going to be fatal to the operation of the department; of that I am sure.

MR. BOHN: Take this type of situation, which is just the reverse of what I mentioned a moment ago. Suppose the department goes in and obtains an immediate order for possession but has no real desire, intention or need to physically possess the property for a year or two, and therefore obtains the order for possession. There is a serious dispute between the owner and the department as to the adequacy of the amounts offered, then if the present law is allowed to stand and the department does not take physical possession for a year and a half, the owner then, while he is in possession of the property, can't use it or can't improve it or develop it and yet he is deprived of his interest over all that period of time.

MR. RHYNER: He couldn't anyway if there were a condemnation suit on, Mr. Bohn. Filing of a *lis pendens* would mean that any improvements placed on the property subsequent to that time wouldn't be reimbursed to him anyway.

MR. BOHN: That is my point.

MR. RHYNER: Regardless of whether there is an order for immediate possession, the mere filing of a condemnation action, in effect, freezes the property and the man is not entitled to interest.

SENATOR BUSCH: He might not put some crops in that he otherwise would put in if he doesn't know when they are going to take actual physical possession.

CHAIRMAN: I've seen that problem arise.

SENATOR BUSCH: He is not getting any interest on his money, which doesn't seem to be quite fair.

SENATOR COOMBS: Physical disposition too, would allow you to put him out of his home, wouldn't it? In other words, he would have to move bag and baggage within three days or whatever the time was and put up a new house somewhere. I don't think he'd do that, but—

MR. RHYNER: No, we have a standing order out, Senator, that the absolute minimum notice is 10 days. We would never do that unless there was some emergency.

SENATOR BUSCH: Senator Dolwig, may I ask another question? Have you any idea, Mr. Rhyner, how much it would cost the State of California if interest were paid in all these cases from the date of the court order?

MR. RHYNER: No, I can't, Senator. I'll be glad to get the information if you desire.

SENATOR BUSCH: I think that's important. I don't think there is any great demand for this law, however. I think it will cost the State of California a great deal of money.

CHAIRMAN: I am still not clear. I'm trying to remember what the reason for the bill was at the time it was passed. I think perhaps to take care of the situation Mr. Bohn raised here, of where you had your court order and then over a period of maybe a year there was no writ of possession and no actual taking of possession but actually there was no reimbursement to the owner by having his property tied up over that period of a year. I think the bill was put in to take care of that problem, as I remember it.

MR. BOHN: That's my understanding, basically, of what they wanted.

SENATOR BUSCH: I think that must be the reason for it.

MR. RHYNER: The freezing of the property is effective by the condemnation action, from which the owner is not entitled to interest. The order of immediate possession does not freeze.

CHAIRMAN: You are entirely correct about that. The only thing is you have a situation where you file your condemnation suit, there's no order yet or else you go in and get an order. If you get an order and the order is for immediate possession there's no problem, because then he gets his interest.

MR. RHYNER: No, not until we exercise these warrants, Senator.

SENATOR BUSCH: Until you take actual physical possession, is that right?

MR. RHYNER: That's right, the man is still in possession of his property. The man may have a tenant in there and he is still drawing rent.

MR. BOHN: There is a distinction, it seems to me, between the two types of situations. In the case where you have an order for immediate possession the ax is over his head all the time. You could, anytime you chose, upon a three-day notice, move in and move him right out. Whereas, in the case of the condemnation suit without a judgment and without an order for immediate possession that matter can be reasonably calculated as to when it is going to go to trial and when there might be a final judgment of the court, so in the one instance the man could make some plans, whereas, in the instance where there is an order for immediate possession he is subject, and I use the word "whim" only to illustrate my point, not that that has been true, but he is subject absolutely to the determination of the department as to when they are going to move right in, without court intervention from the standpoint of a contested trial.

MR. RHYNER: There is no question but what he is subject to having possession of his property taken more quickly.

SENATOR COOMBS: In other words, if he has a dairy he would be out of luck.

MR. RHYNER: As practical matter, we give considerable notice. He is subject in theory to that—

CHAIRMAN: Senator Desmond, you're just in time. We're on your last bill here, 2538. To bring you up-to-date on our discussion here,

it is our understanding that the reason for the bill was to take care of the situation where there is a court order but immediate possession may not be taken over a period of time anywhere from five days to a year. In the meantime the property owner does not have an opportunity to do anything with his property and therefore it was felt that interest should be computed from the date of the order rather than from the date of the taking possession of the property. Was there any other reason for the legislation, as you remember it?

SENATOR DESMOND: No, I think that is the answer to it. After all, there should be interest paid because the property to all purposes is destroyed, lost and he hasn't got his money.

CHAIRMAN: Thank you. Mr. Rhyner, is there anybody else who would like to comment on this bill?

MR. LARSON: A very brief comment and that is you date this from the order under a constitutional amendment that will come up permitting, if it is voted in, permits the school district to take immediate possession and that requires 90-day notice and during that time obviously they could not take possession even though they have an order. They have an order but it is not effective for 90 days and it would seem proper to make the interest start as of the time that the condemning body is entitled to actually take possession of the property.

SENATOR DESMOND: Isn't that what the bill says?

MR. LARSON: Well, it says from the date of the order and as I understand it—

SENATOR DESMOND: No, no, the order to be made letting the plaintiff into possession.

MR. LARSON: Well, procedurally we may do it different from the State then. Under the three-day notice that's required now we get the order of immediate possession.

SENATOR DESMOND: Where did you get that constitutional amendment? Did we pass it here? To let the school district take possession?

MR. LARSON: I think so.

SENATOR BUSCH: Senator Dolwig.

CHAIRMAN: Yes, Senator Busch.

SENATOR BUSCH: I think the last line then of that proposal should be changed and before "date" put "effective." That would take care of that. That solves your problem.

MR. LARSON: That solves my problem.

SENATOR DESMOND: Well, no wait. I'm curious about the other thing though. Isn't there a constitutional amendment now before the people to give school districts the right of immediate possession?

MR. LARSON: Yes, Senator.

SENATOR DESMOND: Is it up this November?

MR. LARSON: I believe so.

SENATOR DESMOND: Where did that come from? Did we pass that thing here?

MR. LARSON: I can't remember whether it is a Senate constitutional amendment or an Assembly constitutional amendment.

SENATOR DESMOND: Well, it had to go through both houses.

MR. LARSON: Well, I don't know that much about legislation, but if it did, it went through.

SENATOR DESMOND: Why aren't you bureaucrats honest enough to come before the Legislature and tell them the truth? I'd never have voted for a thing like that if I knew about it.

SENATOR DOLWIG: Maybe you didn't.

SENATOR BUSCH: I don't recall voting for it.

OTHERS: I don't either.

MR. BOHN: I don't think it came before the Judiciary Committee.

CHAIRMAN: Perhaps it came before a constitutional amendment.

SENATOR BUSCH: I don't even recall it on the Senate floor.

SENATOR DESMOND: Go out and campaign against that one.

MR. LARSON: Well, I didn't write it.

SENATOR DESMOND: Nobody is blaming you. (Laughter.) You people sit out there and you bring this stuff into this Legislature and you sell them a lot of things. You ought to be ashamed of yourselves. (Laughter.)

CHAIRMAN: That's a general category statement. (Laughter.)

SENATOR DESMOND: Well, all right, I'd take the whole crowd of you, all you bureaucrats. You spend a year and a half thinking up how you can sell the Legislature these ideas, and I apply this to the highways and everybody else, and then you come over here and we're supposed to digest that in 15 minutes. Well, we don't have time to even hardly think about it.

CHAIRMAN: All right gentlemen, is there a disposition of the committee to insert the word "effective" from the effective date of said order?

SENATOR BUSCH: I'll so move.

CHAIRMAN: All right, it has been moved that we insert the word "effective" after the word "the" and before the word "date." All those in favor say "Aye."

IN UNISON: Aye.

CHAIRMAN: Contrary. (No response.) The amendment is adopted and what's the wish of the committee insofar as the recommendation of the main committee is concerned?

SENATOR BUSCH: I'll move it out with the recommendation that do pass as amended.

CHAIRMAN: All right, you have heard the motion. All those in favor say "Aye."

IN UNISON: Aye.

CHAIRMAN: Contrary. (No response.) The bill is out. Mr. Bohn, did you now want to hear from the committee on Mr. McDonough, on the rest of these, or the agenda, or what?

MR. BOHN: My thought was, Mr. Chairman, with your permission, that practically the entire range of procedure in eminent domain matters is covered one way or another by the bills which follow. And I was wondering if the committee would not wish to hear at this time from Mr. McDonough and from his experts on the plans that they have for studying the entire field and then perhaps you might want to relate it to each one of these bills as he's speaking or after he finishes.

MR. McDONOUGH: I'm John McDonough of the California Law Revision Commission, gentlemen, here at the suggestion of Mr. Bohn to explain to the committee the commission's current assignment to make a study of condemnation law and procedure and so that you

would have that in mind in going forward with your work on the subject. This assignment came to us through a concurrent resolution which was introduced by Senator Cobey at the 1956 Session of the Legislature and the specific language of the resolution requested the commission to make a study to determine whether the law and procedure relating to condemnation should be revised in order to safeguard the property right of private citizens.

Now the commission's regular procedure, as I think you probably are all aware, is to ask someone who knows something about a subject to make a preliminary study on it for us and to file a written report which will give the commission the information it needs to work out recommendations which it will then make to the Legislature. After the research consultant, as we call this expert, has made the report, the commission considers it and usually writes some tentative recommendation which it then sends out to other interested people in the field for observations and comments before the commission finally makes up its mind as to what it will recommend and then the bills are introduced here.

In this case, of course, while we often use law professors for these purposes, because the topics are suitable or studied by law professors. Obviously, the subject of condemnation was not such a subject for two reasons. One, because there is no course in that subject and second, because experience in the field, in actual files of cases obviously is what one needs in this situation to make any kind of intelligent recommendation, so that we began to look around for some qualified person in the field and the name of Stanley S. Burrill of Los Angeles came to the commission's attention from several sources. Mr. Burrill was described to us as the outstanding condemnation lawyer in Los Angeles.

SENATOR DESMOND: On which side?

MR. McDONOUGH: Primarily as an attorney representing condemnees, private persons, but the firm also does do work in certain cases for plaintiffs.

SENATOR DESMOND: Well, let me ask this. Does that firm have anything to do with being special counsel for the State of California in condemnation? Like Jones in San Francisco?

MR. McDONOUGH: Mr. Albert Day, who is one of the members of the firm who is working on the subject now is here and can better answer that question than I can, Senator.

SENATOR DESMOND: I would like to have it answered.

CHAIRMAN: Will you come up, Mr. Day, please, and answer the question? Will you please come up so we can get it in the record?

MR. DAY: We do not, Senator. We do not represent the State of California in any way.

SENATOR DESMOND: Well, do you represent, as a specialty, any other condemnors?

MR. DAY: We have in the past represented the City of Santa Monica. We are presently representing the City of Santa Ana in connection with the acquisition for their civic center on the condemnor's side.

SENATOR DESMOND: You're familiar with the fact, I assume, that the Highway Department doesn't now rely on, in all cases, upon their old group of Civil Service attorneys, but do have special attorneys

like Hollaway Jones in San Francisco, who represents the Highway Department in condemnation suits. Are you not familiar with them?

MR. DAY: I am familiar with that. Hollaway Jones has a part-time job with the State and a part-time private practice, however, we have never represented the State of California, do not expect to in the future. The Los Angeles office appears to handle all of their own work for the Division of Highways.

CHAIRMAN: Any further questions? Thank you, Mr. Day. You may proceed, Mr. McDonough.

MR. McDONOUGH: So that we contacted Mr. Burrill at that time and asked him if he would be willing to undertake a study of this kind, explaining to him that what the commission would want would be an objective, impartial analysis of the problems considered with such recommendations as he might see fit to make. Mr. Burrill was interested and we asked him if he would prepare an outline in some detail of the possible areas that such a study might cover, and he did that. I have copies of that outline here for members of the committee which simply outlines the subject matter that he thought a study of this kind might cover. It is a rather detailed one and after having gone over that we decided that we would go ahead with Mr. Burrill and we were just about to make the arrangements with him when unfortunately Mr. Burrill died quite unexpectedly. This set our time table back a bit, but the firm of Hill, Farrer and Burrill, of which he was a member, indicated that it would be willing to go ahead and honor his commitment to us and so we went ahead and made a contract with that firm to do a study covering a part of the subjects which are outlined here.

The areas covered by this study are the first study to be made and the feeling here was that we would have a preliminary study made before fall, and then we would take a look at the situation and determine whether we wanted to go forward and in what areas. But the first part of the study was to cover the subject matter of II-B in this outline, which is the cost of removal and relocation; Roman III, which is taking of possession and passage of title, and Roman IV, which is matters of evidence.

The research consultant then is the firm of Hill, Farrer and Burrill and three of the men in that firm have been working on the study and consulting with the commission. The senior member is Mr. Robert Nibly, who had worked with Mr. Burrill for some eight or ten years. Another member of the firm is Mr. John McLoren, who had had some 10 years prior thereto of experience with the Division of Highways in the Department of Contracts and Rights of Way in their Los Angeles office and the third man working on the subject is Mr. Albert Day, who was just here and who, after graduating from law school, had been some five years with the Department of Contracts and Rights of Way. So that here we have, we believe, three people, two of whom have had extensive experience on the public side as well as the private side of this general subject matter. They have been working for some time on this first and preliminary study and expecting to file their report with the commission on the subject matter of moving expenses within the next 15 or 20 days.

I should say that after the 1957 Session the research consultant reported to us that there were several new changes in the law relating to

the subject matter of taking possession and passage of title and that because of these new changes it was their recommendation that that part be put over for a time until some experience was had under these new code provisions and the amendments to some of the old ones and therefore it was agreed that we would put that part over for a time and substitute for it in the present study the subject matter of pretrial procedure in condemnation actions.

We have not yet received any report from these gentlemen. As I said, we expect to receive the first one shortly. After that is received the procedure will be as usual. The commission will make its own study on the subject, relying largely on the consultant's report for information. Having reached certain conclusions the commission will undoubtedly inform other interested people throughout the State, both on the private side and public side of what the commission is tentatively thinking about and ask if they have any comments on that and then only after all of that will the commission have any recommendations to make on even that much of the subject matter to the Legislature. If this all should go well then we will proceed with other parts of the study and we would hope to cover a good part of what has been covered in this outline and make recommendations from time to time for the Legislature to act upon.

SENATOR DESMOND: Is the property owner represented at all? I mean the general property owner—in this study?

MR. McDONOUGH: I should say, not as you mean, the individual citizen, so to speak, sir?

SENATOR DESMOND: Well, I meant the citizenry generally. The people—are they represented in this study?

MR. McDONOUGH: No, sir, this is a study being made by—they obviously will be represented before the Legislature, I take it, when the study is acted upon.

SENATOR DESMOND: No, they won't be, not except by what representation we sitting back of these desks can give them.

SENATOR DOLWIG: That's right.

SENATOR DESMOND: The people don't know anything about these things that you're doing. They don't know anything about what the code or commission is doing or what the Uniform Contracts Law and things of that sort. The public don't know that.

MR. McDONOUGH: I think that's right, Senator.

SENATOR DESMOND: All right. Well, then, I think the public ought to be consulted. That's why I asked Mr. Day these questions, and whether or not he was representing the State on this thing. I think that what we need is a pretty vocal atmosphere from the people generally whose property is being affected by the things that you are bringing and other people are bringing before this Legislature.

MR. McDONOUGH: I think that is quite right, Senator, but on the other hand, sir, it has been our view and I suppose that it is yours that certainly the Law Revision Commission is not the body to go out and find out what the view of the public is.

SENATOR DESMOND: That's my criticism of the Law Revision Commission. I've been critical of it, and you know it, for a long time.

MR. McDONOUGH: Yes, sir, I know that.

SENATOR DESMOND: You're dwelling in a glass house and you don't know what's going on outside of that glass house.

MR. McDONOUGH: Senator, my answer to that, and I'm certainly not trying to be quarrelsome about it, is simply this: Our function, as we see it, is to provide certain basic information by way of summarizing the law in the State at the present time by way of bringing to your attention the statutes and case law of other states on the subject matter and by way of making recommendations which we've had time to think about. Obviously, these are not going to be enacted as we recommend them, that has been our experience, too. Our attempt is to be helpful, as experts or quasi-experts, in providing information to the Legislature, but obviously, it's the Legislature that will pass the legislation and—

SENATOR DESMOND: But obviously you come before the Legislature and say, "this is the Law Revision Program" and then by reason of saying it it becomes omnipotent and it is perfect. That is the difficulty, as I see it.

CHAIRMAN: Senator, may I follow through on the question you raised here? I am not clear now, Mr. Day made certain answers to Senator Desmond's inquiries. You made statements that Mr. Burrill is now deceased, is that right? So he is not one of the participants. So Hill, Farrer and Burrill is going to continue the studies. Is that correct? You made a statement there that I would like to have clarified, you said that two of the partners of Hill, Farrer were representing public agencies.

MR. McDONOUGH: No, I merely was pointing out that their experience included in the past representation of public agencies. I am not prepared to say and I don't know whether these two men of whom we are now speaking are members of the firm or associates in the firm. There are three men in the firm who are working on this study. One of them is Mr. Robert Nibley. He's the senior member of the firm and he is a member. On this I am clear. He has not had any experience working on the public side of the question. Mr. McLaren and Mr. Day, however, had both, prior to becoming associated with the firm, worked for 10 and 5 years respectively, for the State Department of Highways, so that I was merely pointing out that these men had both had experience on both sides of the fence.

SENATOR DESMOND: Oh sure, that loads the thing up to start with. You said they have never represented private property owners.

MR. McDONOUGH: No sir, I said they are currently almost exclusively in condemnation matters representing private property owners.

SENATOR DOLWIG: Pardon me, Senator. I still would like to get at the bottom of this. I have, very frankly, I have the same concern as Senator Desmond has, and that is that the people who are not represented—after all, the governmental agencies have adequate representation in these studies. That is obvious now, but what representation, in these studies, is the property owner going to have? As far as I can see, the only representation that the property owner could have would be by having men on, lawyers, etc., that have represented the private owners.

MR. McDONOUGH: Well, let me clarify this. These people represent property owners exclusively. It was our concern that you would be concerned that that would be the trouble with the study coming from

them, that they would be biased in favor of the property owner, because they are people who represent defendants in condemnation matters.

SENATOR DESMOND: That is the person who ought to be represented.

MR. McDONOUGH: Well, of course, and our assignment said that.

CHAIRMAN: That is why I want to get this clarified.

MR. McDONOUGH: All right. I'm glad you're asking the questions because this is the firm, I would not want to go too far, I would say this, one of the most prominent firms of defendant's lawyers in condemnation matters in California, certainly in Southern California. I was merely trying to avoid what might seem to be too much emphasis on that aspect of it by pointing out that both of these men had happened to have extensive experience on the public side so that we thought this the more qualified them to take the kind of objective viewpoint that we wanted taken in this matter, assumed that you wanted taken in this matter. We're not here to argue a case either now or at any other time for any particular recommendation representing anybody except what we suppose is the public interest. We are here to make an objective study and file a report.

CHAIRMAN: Well, Mr. McDonough, I am just going to say this as a sidelight, you made a very interesting observation when you said that you realize the only way you are really going to get at the bottom of these things is to have the experience, with due respect to the department and so forth, the only way you understand what the problem is and I think it was brought out on these three bills pretty adequately that you only know what the problem is by having had the experience with it. Now, I think the Senator and I are concerned and I am sure the rest of the committee is that—has this firm that is making this study enough experience within its firm to know what the problem is insofar as the condemnee is concerned? Now, Mr. Day, maybe you would like to add something.

MR. DAY: Could I answer that question for you, Senator, if I may? I would say that for the past 25 years our firm has had at least one and sometimes three condemnation specials, operating 95 to 97 percent for the property owners. We have represented, about five or six years ago, before I was with the firm, the City of Santa Monica, as special counsel on a limited number of acquisitions. We now represent the City of Santa Monica on about five or six parcels for their Civic Center Area where we were again employed as special counsel. As far as I know the balance of our work of three men, and we make a pretty good living out of it, has been exclusively for defendants.

Our primary concern in this study, because we were told that we were to present an impartial study, was to be as impartial as possible. Perhaps when the hearing comes up on this bill one of us would like to appear not as a representative or as a research consultant for the Legislative Counsel, but appear in our own private interest as attorneys representing the defendants in condemnation suits and speak in behalf of the bill. We do not conceive that that is the purpose of this study, but we have had extensive experience with Mr. Monk Morgan, who was one of the foremost condemnation attorneys in Los Angeles prior to his death, Mr. Stanley Burrill and our present firm, Mr. Nibley, Mr. McLoren and myself. Now, we are merely three members of a firm of

about 20 odd attorneys, but we specialize and devote 95 percent of our own free, individual time to condemnation work and approximately 95 or 98 percent of that time is devoted to representing defendants.

CHAIRMAN: Thank you, Mr. Day, I think you have clarified the matter now. I think the statement you made Mr. McDonough is the thing that may have caused some misunderstanding.

SENATOR COOMBS: Is the California League of Municipalities, the Grange, the Farm Bureau and so forth, are they connected or consolidated with any of your recommendations?

MR. McDONOUGH: Any of them, or do you mean on this subject?

SENATOR COOMBS: Any of those leagues or their representatives.

MR. McDONOUGH: Most of our subjects, as you know, have been on very narrow private law matters, that is, contracts, real property, or trusts or whatever Our regular procedure has been to send a copy of the consultant's work and the commission's tentative recommendation on any subject to the State Bar and it is referred to the appropriate committee and recommendations and comments come back from the State Bar. In this particular case we would obviously send a copy to the State Bar of anything that we propose to bring before the Legislature. We haven't had occasion to consider here what other groups would receive copies of what we might have to offer to the Legislature. But certainly in this kind of case it is unique and bodies of the kind you mentioned would certainly be appropriate.

Obviously, our purpose in sending this out is to find out whether there is something we have overlooked or if there is some suggestion we can get which would make us better able to make a sensible recommendation to the Legislature. We have never, however, thought of ourselves as being a sounding board for public opinion or as marshaling public opinion or anything of that kind. We assume that is your function and the function of the interim committees such as this. We're purporting to simply supply information which we hope will be valuable to you in making up your minds but not assuming that your minds would be made up solely by virtue of what appears in our reports.

SENATOR COOMBS: Let me ask another question then. You say that is our function. How are we going to get that information unless they appear before us. Your supervisors and your league of municipalities and so forth.

MR. McDONOUGH: The way these matters come before you is the way any other—

SENATOR COOMBS: Pardon me, you can't go out and run them down.

MR. McDONOUGH: No, but if the bills are filed, if they make important changes in these matters we can usually assume they will be here.

SENATOR COOMBS: They appear at the committee meeting when you are in session, when you have about 15 minutes.

MR. McDONOUGH: For us it is the problem of not unduly interfering in what is the legislative function. Certainly we would expect people to have doubts about the wisdom of our purporting to go out around the countryside and sound out public opinion. We've been very chary of getting into areas that we think are reserved, and prop-

erly so, for the work of the interim committees. It may well be that on a subject as complicated as condemnation the procedure that would ultimately be followed, we would file that report together with any bills we prepare to go to the interim committee and the interim committee would spend a couple of years finding out what else needed to be found out besides what we had filed before the committee was willing to make any recommendations. But we have been quite anxious to avoid appearing to think that we were supposed to be the persons who were out sounding out public opinion on these matters.

In any event, the only thing we wanted to say beyond bringing to your attention the fact that we're engaged on the study and that a part of it is well under way, was that Mr. Day is here and if you wanted to take time this afternoon to have him discuss with you in a general way what has been covered in the first of these studies and how they are proposing to go forward and answer any question you might have on the way they are going forward, we would be glad to do that. There are no matters before the committee that I know of at the moment upon which his preliminary study bears. It may be that you would rather go on with other things, but he is here, willing to answer questions about what they have been working on or any other questions touching on this study.

CHAIRMAN: Thank you, Mr. McDonough. I would like to bring up to the members of the committee here—I think we have a problem of how this subcommittee wishes to proceed in relation to the studies that are being made by the Law Revision Commission. I might say parenthetically that it has always been my concept that this type of a study was beyond the scope of the Law Revision Commission, but since we passed a resolution I guess we have it here with us. Is it the feeling of the subcommittee that we should wait and have a further hearing based upon the recommendations made by the Law Revision Commission or not? I would like to have some discussion on that if any of the members of the committee—

SENATOR BUSCH: If they haven't completed their studies yet I think we ought to wait and get a report when they have completed their studies and their recommendations.

CHAIRMAN: All right. That certainly seems reasonable unless there is some other viewpoint on this.

SENATOR DESMOND: Well, since you don't have anything before you and as I read this outline of possible areas of investigation, they are asking a lot of questions. How far do you go? Is the Law Revision Commission going to ask this firm of attorneys to solve all of these questions or just what is the procedure?

CHAIRMAN: Let me ask so we can get our discussion down, Senator. You weren't here this morning. What we have done is to take the bills that were vetoed by the Governor, there were three of which were yours, and the committee has now taken action on those three bills as far as the main committee is concerned. Now, in addition to that, we have two other categories of bills that are before the subcommittee. One of them, bills that had been considered at a previous meeting of this subcommittee with a notation of action taken, that is one group of bills. Then there is another group of bills which were not previously considered by the subcommittee, but are on the general

subject of condemnation. In these two categories of bills the subject matters as contained in this outline would be covered as I understand it.

MR. McDONOUGH: I think that is quite right, Senator, without knowing the bills in detail. I'm sure that's the case.

CHAIRMAN: Yes, now let's go on from there.

SENATOR DESMOND: I just happened to pick this up and saw here the right to condemn on the question of whether the condemnation resolution is conclusive and so forth. Do you propose to study that and bring in answers as to whether or not it should be conclusive?

MR. McDONOUGH: Yes sir, we propose to bring in an analysis of the present law in this state and other states and try to analyze as best we can the various considerations, pro and con, and suggest such changes, if any, occur to the commission that seem to be sensible and put the matter before the Legislature for such action as it proposes to take. The idea is to be helpful.

CHAIRMAN: Let me point out the three areas which these bills cover. The first one is the elements of compensation, cost of removal and location and compensation for loss of property. During the session the subcommittee spent considerable time, as you remember, on that particular subject. In addition to that, on page 3 the recoverable costs, there were two or three bills on the recoverable cost question on which the committee wants to get some answers. In addition to that, the allocation of the award. That's where you have your leasehold interest and so forth. That seems to be a pretty thorny problem that we wanted to build further information on. I think those three fields, in a general way, are covered by legislation which has been referred to this subcommittee for study. Now, do you have anything further?

MR. McDONOUGH: I have nothing unless there are some questions.

CHAIRMAN: Mr. Bohn, do you have something you would like to add?

MR. BOHN: Let me make a brief comment, Mr. Chairman. It was at my suggestion that Mr. McDonough and the Law Revision Commission representatives appear here today for the reason that I felt that knowing of their study and of the assignment from the committee that it would be an advantage to the committee to hear how far they have gone and their method of approach in order to avoid, where possible, duplication. I felt also that some of these problems, for example, upon which the committee will no doubt act between now and the next session of the Legislature that if the committee could have the benefit of whatever studies can be completed prior to that time it would provide just that much more of a base for whatever determination you wish to make.

CHAIRMAN: Well, it seems that Senator Busch's suggestion is a good one and that is that we wait until these studies have been completed, until we go into these three subjects. Is that agreeable with the committee?

MR. BOHN: May I add one point, Mr. Chairman? I'm not sure how fast these studies are going to be completed and I had this feeling, that it was the general intent of the subcommittee at its previous meeting and also of the Judiciary Committee in 1957, that the matter required fairly prompt attention. So my general thinking was that insofar as the studies could be completed prior to the 1959 Session of the Legis-

lature it would certainly be helpful to have the information whether you would wish to defer action on the bills which they couldn't get to prior to that time would be another policy question.

CHAIRMAN: Let me ask Mr. McDonough, how soon do you think you could complete your studies in the three fields that I just outlined?

MR. McDONOUGH: We have an existing agreement with the firm to make studies on three subjects. Moving expenses, pretrial in condemnation cases and evidence in condemnation cases. It's certain that part of that, at least the study with respect to moving expenses under II-B will be covered and the commission will have something upon which it can make a report before the '59 Session. Beyond that I am quite certain that we won't have anything to report for '59. This is a big subject and to make the kind of detailed study we are undertaking to make with people who have a lot of other important assignments is obviously going to take time. We haven't even hoped to cover the whole area that is outlined in that outline for '59. I would say that those three would be the best we could do by '59 and that the others we would not be able to report on until '61 and indeed probably wouldn't be able to report on all then.

CHAIRMAN: It appears then that perhaps the subcommittee ought to take the assignment of these two categories of bills and hold a hearing regardless of what the Law Revision Commission does at a later date.

SENATOR COOMBS: Do you want an "Amen" to that remark? That is the way I feel about it.

CHAIRMAN: How about you, Senator Busch?

SENATOR BUSCH: It's O.K. with me.

CHAIRMAN: It seems to me we ought to go ahead with this. We have these two categories of bills here and if the studies are completed by the time the subcommittee takes action on these bills as far as the main committee is concerned it would certainly be desirable, but if they aren't ready they just aren't going to be ready.

SENATOR DESMOND: That is true, I think, but we're going to get into this removal and relocation situation and that's a new law and it's all going to be brand new on that particular subject as I see it, is that right, Mr. Day? You're going to have every bureaucrat in the State of California on your neck.

MR. DAY: They've been down our neck before, Senator. That is new law. There is no—outside of the federal statute, which does permit in some limited instances paying the cost of removal of personal property. There are no state statutes particularly referable. We wrote letters to all the state legislatures asking them for any bills which had been introduced in their last meetings. We got no answers stating that bills had been introduced except insofar as they were introduced in the California Legislature. We have no real model statute or other statutes to go on.

CHAIRMAN: Mr. Day and Mr. McDonough, would it be possible for you to have completed your studies on first of all, elements of compensation, as you have it outlined? Then going over to roman numeral V on recoverable costs—no, the next one would be VI on allocation of award.

SENATOR DESMOND: That is a question that sure needs some studying. We're going to the Supreme Court on that question within the next couple of months and then we'll make some laws.

CHAIRMAN: Maybe that will take care of the situation.

SENATOR DESMOND: Separate the leasehold interest from the fee.

MR. DAY: It's a very serious problem, particularly from the owner's standpoint.

SENATOR DESMOND: The way the law is today, according to what the right-of-way people want to impose on you, the interest of the lease would eat up and absorb all the interest of the property, the value of the property would be gone. As I read this Section 1248, I think each interest has to be determined, but not according to what the present—

MR. DAY: Not under 1246.1.

SENATOR DESMOND: That is the way the State Department and these condemnors want it and that isn't justice.

MR. DAY: I think gentlemen, that we would have no objections to changing our studies if it would be a benefit to the committee. We had outlined and programmed certain other studies, but we could certainly change them to meet your accommodations in any one.

CHAIRMAN: As I remember, these bills that we have left for consideration fall roughly into these three categories: elements of compensation, No. V, recoverable costs and No. VI, allocation of award. Now, if the Law Revision Commission could proceed with those three general subject matters and be prepared to present this information to the committee in time to make a recommendation to the main committee I think we would be making some progress.

MR. DAY: I might say this, sir, that on this elements of compensation, it is a rather large topic as covered by the outline here and we are under some pressure of—

CHAIRMAN: May I say then that the subject matter as far as the element of compensation—the two that we have been primarily concerned with under these bills is cost of removal and relocation and compensation for loss of profits from business interruption. Just those two general categories.

MR. DAY: We have the one on cost of removal and relocation and we will submit it by the 20th to the Law Revision Commission of this month. The compensation for loss of profits in business interruption we have not done anything on that as yet.

SENATOR COOMBS: Mr. Chairman, I would suggest that we have that by the first of December.

CHAIRMAN: How would that tie in with the main committee?

MR. BOHN: We have a meeting in early December of the main committee.

CHAIRMAN: Well, could you have it available about the 15th of November?

MR. McDONOUGH: We can certainly try, Senator. Are you speaking now of merely the elements of compensation or were you speaking also of recoverable cost and allocation?

CHAIRMAN: All three, if possible.

MR. McDONOUGH: I would guess that that's going to be a pretty tall order, as Mr. Day has said, these people are undertaking this on a contractual basis with the commission, but on such an arrangement that the work is substantially gratuitous. It's a public service which they're engaging in on behalf of helping the State and Legislature to do the job it's trying to do on this subject. Obviously, they have to take some time out to earn a living and these are major subjects. For example, compensation from loss of profits in business interruption was considered as the topic for study, but at Mr. Burrill's recommendation was put aside. He suggested it is so nebulous and controversial a subject that perhaps we would do better to stick to something a little more concrete for at least our first study and attempt. I'm not rejecting this, I'm merely pointing out the scope of what is involved here, I think.

CHAIRMAN: Would the subcommittee like to narrow its field down then?

SENATOR DESMOND: No, I'd like to point this out, Mr. Chairman. Perhaps Mr. McDonough and Mr. Day can't go back in their recollection in this Legislature. In 1937 Mr. Regan and Mr. Montgomery and a few more people came in here with these statutory provisions for condemnation and the allocation of damages and so forth and got all that written into the code. Now, that's 20 years ago! You weren't around practicing law then. Those things were pushed through this Legislature by the Highway Department. Now, we've got to overcome some of those things and give some justice to the people. So why don't you approach this from the standpoint of equity rather than from the standpoint of saying, "this is the law today." There's some equity in this thing and soon we have to recognize that equity.

MR. DAY: Well, Senator, we were certainly going to take—our regular procedure is to have anybody who works for us to make recommendations on the policy issues that are involved. Policy is the idea of first information, what is the present status of the situation and then what are the policies and recommendations of the commission and try to take those into account.

SENATOR DESMOND: The interest on the part of the property owner, is that what you are trying to do, or in the interest of the State, who is the condemner?

MR. DAY: Well, Senator, in the first place, our assignment as worded is to have us work in the interest of the private property owner. That's what the study says, to see that there is adequate compensation. Now, on the other hand, we're not looking upon ourselves as a lobbying group for private property owners where we would try to come in with impartial recommendations based on impartial and objective study.

CHAIRMAN: All right, let's see whether we can't resolve this. Mr. Day, you say that insofar as costs of removal and relocation you'll be ready to report on that within the next two weeks.

MR. DAY: Yes, Senator. We have sent copies of the proposed statute that we submitted for the committee's discussion, whether

they wish to amend it or not, to various condemners in the Los Angeles area to find out if there were any technical difficulties involved in the administration of the statute as we proposed, for the purpose of attempting to work those out beforehand, not for whether they're against or for it so much, but merely for technical consideration. We have to date received no replies. That's what has been holding us up, but we hope to have it in and have promised to have it in by the 20th.

CHAIRMAN: All right then, may I suggest this to the subcommittee. If you would present whatever information you have developed on recoverable costs and allocations of award by November 15 the subcommittee can then determine whether the information is adequate enough for the subcommittee to take action on the legislation that's under consideration as far as recommending it to the main committee is concerned. I think that is perhaps the best thing that we could do at this time.

MR. DAY: We would be happy to do that, Senator. We will do the very best we can and get as much information on these three subjects for the committee as we possibly can.

CHAIRMAN: Thank you, Mr. Day.

MR. DAY: I take it that you are eliminating then the elements of compensation and loss of profits from business.

CHAIRMAN: We are not eliminating it if you can develop any information on it, but these other two would have priority.

MR. DAY: First of all you want allocation of the award and recoverable cost. That in addition to removal and relocation costs.

CHAIRMAN: O.K. then, Mr. Bohn, as I understand it, that would give us enough time to make recommendations to the main committee.

MR. BOHN: Yes, there is a meeting of the main committee in early December. I think it is the first week of December and no doubt there will also be one in early January at the time of the session. If this subcommittee were willing to meet some time between November 15 and the meeting of the main committee there would be no reason why the matter couldn't be resolved and presented to the main committee for action prior to the session.

CHAIRMAN: All right then, unless there is objection and unless there are other viewpoints the committee will meet on eminent domain again as soon as possible for a report to the main committee. Thank you very much, gentlemen.

c. DATA SUBMITTED FOLLOWING HEARING

In accordance with the subcommittee's request, the legal staff of the Department of Public Works submitted statistics with reference to the following inquiries:

1. A report of the department listing all surplus property acquired during the past five years.

2. A report of the number of sales of excess property acquired during the past five years and not needed.

3. A list of excess properties still retained by the department and presently being leased.

The response to the above is as follows:

SACRAMENTO 7, CALIFORNIA
August 13, 1958

MR. JOHN A. BOHN
Counsel, Senate Committee on Judiciary
640 First Street
Benicia, California

DEAR MR. BOHN

In re: Excess Property—Division of Highways

In accordance with your letter of July 25, 1958, we are submitting the following information in answer to the questions contained therein:

1. During the last five years, the Division of Highways declared 3,884 parcels to be excess property. It is not possible to list all surplus property acquired by the Division of Highways during this time as the resolution of the Highway Commission authorizes the acquisition of the entire parcel for highway purposes. After construction has been completed, if a portion of the realty has not been used (or will not later be used) for the improvement, the Division of Highways declares it to be surplus. Accordingly, we are able to supply only the number of parcels declared to be surplus.

2. During the past five years, the Division of Highways sold or exchanged 2,445 parcels of realty because they were not needed for highway improvement. The State realized \$15,405,654.24 from the transfer of these properties by sale or exchange. It is possible only to estimate whether the State made a profit or loss on these transfers, as the portion conveyed was acquired as part of the whole property. However, the Division of Highways has estimates on the cost of this property to the State for the last five years, with the exception of the fiscal year 1954-55. The data compiled by the division is as follows:

COST TO STATE FOR EXCESS PROPERTY LATER CONVEYED

| | <i>Property sold</i> | <i>Property exchanged</i> | <i>Total</i> |
|--------------|--------------------------|-------------------------------|---------------------|
| 1953-54----- | 525,689.13 | 490,508.06 | 1,016,197.19 |
| 1954-55----- | ----- | ----- | ----- |
| 1955-56----- | 1,762,870.60 | 1,795,419.88 | 3,558,290.48 |
| 1956-57----- | 4,858,744.45 | 1,305,709.38 | 6,164,453.83 |
| 1957-58----- | 2,575,769.05 | 875,640.82 | 3,451,409.87 |
| | | | <hr/> 14,190,351.37 |

RETURN TO STATE ON SALE OR EXCHANGE OF ABOVE PROPERTY

| | <i>Property sold</i> | <i>Property exchanged</i> | <i>Total</i> |
|--------------|--------------------------|-------------------------------|---------------------|
| 1953-54----- | 698,581.92 | 502,674.67 | 1,201,256.59 |
| 1954-55----- | ----- | ----- | ----- |
| 1955-56----- | 1,561,117.59 | 1,608,162.98 | 3,169,280.57 |
| 1956-57----- | 4,708,484.53 | 1,268,375.31 | 5,976,859.84 |
| 1957-58----- | 2,975,303.60 | 839,719.81 | 3,815,023.41 |
| | | | <hr/> 14,162,420.41 |

In order that your records may be complete, I have requested the Division of Highways to make a similar investigation for the fiscal year, 1954-55. When I receive this information, I will forward it to you.

In analyzing these statistics, you might bear in mind that surplus property is sold after the completion of the improvement. Inflationary trends may occur between the time of acquisition and the time of sale and the presence of the freeway may also affect the value of the remaining property.

3. At the present time there are 24 parcels of excess properties being leased by the Division of Highways. I am informed that such leases usually occur when the division is unable to receive bids on the property, or when the bids received are lower than the division's estimate of value.

If you desire further information or greater detail on this matter, please let me know.

With best personal regards.

EMERSON W. RHYNER
Attorney

d. CONSIDERATION BY FULL INTERIM COMMITTEE

The recommendations of the subcommittee were presented to the full Judiciary Committee on September 5, 1958. It was noted that the Department of Public Works had been notified of the hearing and had submitted in writing its views on the following eminent domain bills.

The letter reads as follows:

SACRAMENTO 7, CALIFORNIA
September 4, 1958

MR. JOHN A. BOHN, Counsel
Senate Committee on Judiciary
Room 405 State Capitol
Sacramento, California

DEAR MR. BOHN: This will acknowledge your letter of August 29, 1958, in which you state that three bills pertaining to eminent domain will be heard by the Senate Judiciary Committee on September 5 and further state that any views we may have thereon may be expressed either in person or in writing.

As you know, the Department of Public Works was represented at the hearing on these bills before the subcommittee on May 5, 1958, and commented on the bills at that time. However, we wish to briefly reiterate our comments as follows:

S.B. 2531. We assume that the bill under consideration by the committee is the bill in its final form as passed by the Legislature in 1957. This bill will increase clerical work and demand more time of negotiators. It thereby will result, so some extent, in increased administrative overhead. We are not aware of any benefits from the bill which would outweigh the additional administrative burden. However, if the Legislature deems that such additional administrative work is justified, the Department of Public Works can administer the procedure set forth in the bill, with the amendment as recommended by the subcommittee.

S.B. 2537. We again assume that this bill is being considered by the committee in its final form. As is the case with S.B. 2531 above, we fail to see where the benefits of the bill will outweigh the administrative burden, as the information required in the bill is normally attached to our complaint as an exhibit. However, we can administer the procedure, assuming that the amendment as proposed by the subcommittee is adopted.

We also earnestly request that your committee consider the suggestion of the County Counsel's Office of Los Angeles County that the data need not be furnished unless requested by the property owner. Our experience has revealed that the property owner normally obtains this information from the data furnished in the complaint or, if he desires further details, from our District Office or during the pre-trial conference. To needlessly send him duplicate material would seem to be a useless expenditure of money.

S.B. 2538. This bill would result in a change in the basic principle of payment of interest during the period of immediate possession. The case of *Metropolitan Water District v. Adams*, 16 Cal. (2d) 676, held that the property owner was entitled to payment for the loss of possession of his property and that interest was a measurement of this loss. This bill would change the basis of payment of interest from the period of loss of possession to a period beginning at the date of order. If the Legislature feels that this change is warranted, with the amendment as suggested by the subcommittee, the Department of Public Works can administer the procedure. While it may result in payment of greater sums in certain instances, we do not particularly see any harm therein.

Thank you for the opportunity of commenting on these bills.

Sincerely yours,

EMERSON W. RHYNER
Attorney

The full committee adopted the recommendations of the subcommittee as to the bills considered at the May 1958 hearing. It was, however, felt that new bills on the subject would not be introduced at the 1959 Session in view of the continuing study by the Law Revision Commission's consultant.

The following bills were introduced as committee bills at the 1959 General Session and are included in the 1959 report of the Standing Judiciary Committee (Part II of this report).

Senate Bill 2531 (1957 Session). An act to add Section 1250a to the Code of Civil Procedure, relating to offers of purchase in eminent domain. (Introduced as Senate Bill 345, 1959 Session)

Senate Bill 2537 (1957 Session). An act to add Section 1247b to the Code of Civil Procedure, relating to evidence in eminent domain proceedings. (Introduced as Senate Bill 346, 1959 Session)

Senate Bill 2538 (1957 Session). An act to add Section 1255b to the Code of Civil Procedure, relating to eminent domain and the allowance of interest after an order is made letting the plaintiff into possession. (Introduced as Senate Bill 347, 1959 Session)

**E. LICENSING OF ORDAINED CLERGYMEN, PRIESTS
OR PERSONS OTHERWISE ACCREDITED TO
PERFORM MARRIAGE CEREMONIES**

**1. INTRODUCTION. SENATE BILL 2312, AS FROM TIME TO TIME
AMENDED, READS AS FOLLOWS:**

SENATE BILL

No. 2312

Introduced by Senator Murdy

January 24, 1957

REFERRED TO COMMITTEE ON JUDICIARY

*An act to amend Sections 70 and 79 of, and to add Section 70.5
to, the Civil Code, relating to solemnization of marriages by
clergymen.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 70 of the Civil Code is amended to
2 read:
- 3 70. Marriage may be solemnized by either a justice of the
4 Supreme Court, justice of the district courts of appeal, judge
5 of the superior court, judge of the municipal court, judge of
6 a justice court, or a priest or minister of the gospel of any
7 denomination, of the age of 21 years or upwards, *licensed*
8 *pursuant to Section 70.5.*
- 9 SEC. 2. Section 70.5 is added to said code, to read:
- 10 70.5. In order to solemnize marriages in this State, a priest,
11 minister, or clergyman must first be licensed pursuant to this
12 section. Upon presentation of satisfactory evidence that a
13 priest, minister, or clergyman has been ordained by the re-
14 ligious denomination he represents and is, at the time of ap-
15 plication an active minister of an existing church, or has been
16 retired pursuant to the rules of his denomination but is carried
17 on the roster of such denomination as a priest, minister, or
18 clergyman of such denomination, the county clerk of the coun-
19 ty in which the applicant resides shall issue to him a license
20 to solemnize marriage. No fee shall be charged for such license.
21 An applicant denied a license by the county clerk may petition
22 the superior court of such county clerk's county for a writ
23 of mandamus to compel such clerk to issue the license.

- 1 SEC. 3. Section 79 of said code is amended to read:
2 79. When unmarried persons, not minors, have been living
3 together as man and wife, they may, without a license, be
4 married by any clergyman *licensed under Section 70.5*. A
5 certificate of such marriage must, by the clergyman, be made
6 and delivered to the parties, and recorded upon the records
7 of the church of which the clergyman is a representative. No
8 other record need be made.

AMENDED IN SENATE APRIL 24, 1957

SENATE BILL

No. 2312

Introduced by Senator Murdy

January 24, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 70 and 79 of, and to add Section 70.5 to, the Civil Code, relating to solemnization of marriages by clergymen.

The people of the State of California do enact as follows:

1 SECTION 1. Section 70 of the Civil Code is amended to
2 read:

3 70. Marriage may be solemnized by either a justice of the
4 Supreme Court, justice of the district courts of appeal, judge
5 of the superior court, judge of the municipal court, judge of
6 a justice court, or a priest or minister of the gospel of any
7 denomination, of the age of 21 years or upwards, ~~licensed who~~
8 *hold a certificate issued pursuant to Section 70.5.*

9 SEC. 2. Section 70.5 is added to said code, to read:

10 70.5. In order to solemnize marriages in this State, a priest,
11 minister, or clergyman must first be licensed pursuant to this
12 section. Upon presentation of satisfactory evidence that a
13 priest, minister, or clergyman *is an active member of, and has*
14 *been ordained by the, a recognized re- ligious denomination*
15 *he represents and is, at the time of application an active min-*
16 *ister of an existing church, or has been retired pursuant to the*
17 *rules of his denomination but is carried on the roster of such*
18 *denomination as a priest, minister, or clergyman of such de-*
19 *nomination, the county clerk of the county in which the appli-*
20 *cant resides shall issue to him a license to solemnize marriage.*
21 *No fee shall be charged for such license. An applicant denied*
22 *a license by the county clerk may petition the superior court*
23 *of such county clerk's county for a writ of mandamus to com-*
24 *pel such clerk to issue the license. ligious denomination, the*
25 *county clerk of the county in which the applicant resides shall*
26 *issue him a certificate to solemnize marriages. No fee shall be*

1 charged for such certificate. The Secretary of State shall fur-
2 nish each county clerk with a list of those religious denomina-
3 tions which for such purposes of civilly solemnizing marriages
4 have been determined to be recognized religious denominations,
5 and organizations may petition the Secretary of State to be
6 placed on such list.

7 As used in this section a "recognized religious denomina-
8 tion" is an organization which has been determined by the
9 Secretary of State as organized and functioning to administer
10 to the religious or spiritual needs of its members. Such status
11 shall not be denied any organization without a public hearing,
12 upon notice.

13 Nothing in this section shall be construed as affecting the
14 free exercise and enjoyment of religious profession and wor-
15 ship nor to affect the conduct of any religious ceremony.

16 SEC. 3. Section 79 of said code is amended to read:

17 79. When unmarried persons, not minors, have been living
18 together as man and wife, they may, without a license, be
19 married by any clergyman ~~licensed under~~ holding a certificate
20 issued pursuant to Section 70.5. A certificate of such marriage
21 must, by the clergyman, be made and delivered to the parties,
22 and recorded upon the records of the church of which the
23 clergyman is a representative. No other record need be made.

AMENDED IN SENATE MAY 22, 1957
AMENDED IN SENATE APRIL 24, 1957

SENATE BILL

No. 2312

Introduced by Senator Murdy

January 24, 1957

REFERRED TO COMMITTEE ON JUDICIARY

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16 upon the records of the church of which the clergyman is a
17 representative. No other record need be made.

2. FIRST HEARING, SEPTEMBER 4, 1958

This bill was referred to the Subcommittee on Civil Code, Civil Actions and Civil Procedure (a subcommittee of the Senate Interim Judiciary Committee) for detailed consideration. The subject was briefly considered at a meeting in April 1958 and it was recommended that a full hearing be scheduled and that interested groups such as the Council of Churches and all denominations be notified and be given an opportunity to appear.

A hearing was scheduled for September 4, 1958, and is reported in full as follows:

Senate Interim Judiciary Committee, Subcommittee on Civil Code, Civil Actions and Civil Procedure, John William Beard, Chairman. Thursday, September 4, 1958, Room 4040, State Capitol, 9.30 o'clock a.m.

Members

Senator James A. Cobey.
Senator Jess R. Dorsey.
Senator Edwin J. Regan.

Present

Senator John William Beard.
Senator Jess R. Dorsey.
Senator Nathan F. Coombs.
Committee Counsel, John A. Bohn.

Witnesses

Andrew W. Oppmann, Jr., Executive Secretary of Senate Interim Committee on Social Welfare.

Rev. Paul A. Miller, representing United Evangelical Brethren Churches in Northern California.

Charles Severns, Executive Secretary of the Christian Churches of Northern California.

Galen Lee Rose, D.D., Executive Secretary of the Sacramento Council of Churches.

John Martin Hoffmann, Committee on Publication for Christian Science Church, Northern California.

Charles L. Reilly, Committee on Publication, Christian Science Church, Southern California.

Rev. John W. Pressly, representing Presbyterian denomination, Sacramento.

Glen Rinard, Friends Churches of the California Yearly Meeting of the Friends, Citrus Heights, California.

R. J. Thurmond, Assemblies of God, Northern California.

Senator Beard called the meeting to order and requested that committee counsel present the background of the bill to date.

Committee counsel noted that the bill was referred to the Senate Judiciary Committee during the 1957 Session for interim study and subsequently assigned by this committee to the Subcommittee on Civil Code, Civil Actions and Civil Procedure. At the April 9, 1958 meeting, of this subcommittee it was recommended that a full scale hearing be scheduled and that all interested groups be notified.

For the record it was stated that although many groups had been notified of this hearing that in view of the many small denominations that exist in the southern part of the State whose names and addresses are not available that future hearings be given adequate newspaper publicity so that all interested groups or persons would have an opportunity to be heard.

The following groups were reported as having written to the subcommittee in favor of the proposed bill:

Northern California Presbyterian Conference.

Rev. George J. Busdiecker, Pastor, St. Peter Evangelical Lutheran Church, Santa Ana.

Rev. Forrest C. Weir, Ph.D., General Secretary, Southern California Council of Protestant Churches, 330 West Adams, Los Angeles 18.

Santa Ana Council of Churches, Thelma G. Willoughby, Secretary for the Council.

Dr. Carl W. Segerhammar, President, the California Conference of the Augustana Evangelical Lutheran Church, 1345 South Burlington Avenue, Los Angeles 6.

Rev. T. H. Van Dyck, President, Evangelical and Reformed Church, California Synod-Pacific Northwest Synod, 316 Font Boulevard, San Francisco 19.

Citrus Heights Friends Church, Glen Rinard, Pastor, 7600 Old Auburn Road, Citrus Heights.

Rev. Rudolph S. Allrich, Evangelical and Reformed Church, California Synod, 427 West Oak Street, Lodi.

Harold S. Wilson, D.D., Field Secretary, United Presbyterian Church of North America, 66 West Hopkins Avenue, Fresno.

Dr. Mack McCray, Jr., Executive Secretary, Northern California Baptist Convention, 375 Bellevue Avenue, Oakland 10.

Senator Beard noted for the record that he had received a telephone message from Mr. William R. Burke, Public Relations Counsel of the Catholic Education and Welfare Organization, 1119 K Street, Sacramento, that he was calling from Chicago, Illinois and would like to present a written statement later.

The chairman also announced that opposition to the bill had been received from the Arvin Ministerial Association of Kern County.

Mr. Andrew W. Oppmann, Jr., appearing at the request of Senator John A. Murdy, Jr., author of the bill, presented the following background with regard to the proposal.

"Following introduction of the bill in 1957, at the request of several ministers in Orange County, it was felt that current laws on solemnization of marriage required revision. They were greatly concerned by the number of marriages being performed by more or less commercial or-

ganizations where a person would set himself up as an ordained minister and carry on a business of marrying people. Another factor was that these commercial marriage firms failed to record such marriages with County Recorders as is required by law and years later there would be no proof of such marriage and embarrassing situations resulted.

In 1957 the bill was supported by the Southern California Council of Churches, the Santa Ana Council of Churches, the California Conference of the Augustana Evangelical Lutheran Church and the Los Angeles County Recorder, Mr. Ray E. Lee, also expressed an interest in the bill, especially with reference to recordation of marriages.”

SENATOR BEARD: Has the Legislative Counsel ever given an opinion as to constitutionality of the bill?

MR. OPPMANN: Not that I know.

SENATOR DORSEY: I question the constitutionality of the bill and feel we should have a determination from the Legislative Counsel. After all, the present law relating to marriages has been in effect since 1880.

MR. BOHN: Mr. Oppmann, how widespread is the problem? Do you have any statistics?

MR. OPPMANN: We have letters from various organizations and persons, but we do not have statistics indicating the extent of the problem.

REV. PAUL A. MILLER: When the bill was presented in 1957 I was president of the Northern California-Nevada Council of Churches and at that time objected to the bill because it would leave out certain classes of clergymen, however, the amended bill eliminates that objection and I presently see no objection to the bill.

MR. BOHN: I am wondering whether the power to grant licenses also gives the power to deny a license, and whether newer denominations will be affected.

REV. MILLER: I feel that the language could be expanded to include all clergymen and there are bona fide denominations which do not belong to organized groups and officials of such congregations could certify the person representing them. Also, if the law were drafted so that the Secretary of State could not deny a license to anyone, but with the requirement that those performing marriages must be licensed they would be more apt to file a certificate with the County Clerk. Some individuals have called themselves a religious organization without performing any of the functions as such except marriage and part of the bill's purpose is to reach this problem.

SENATOR DORSEY: Rev. Miller, do you know of any group?

REV. MILLER: No, my information came from Senator Murdy. My main concern when the bill was introduced was that all denominations be recognized.

Mr. Oppmann then read portions of a letter addressed to Senator Murdy, from Rev. George J. Busdiecker, Pastor of St. Peter's Evangelical Lutheran Church in Santa Ana, with regard to marriage mills.

SENATOR DORSEY: It's hearsay. I recently met with 17 Evangelical ministers from different points in Kern County and they were all opposed to the bill. They could see no necessity for the bill and questioned its constitutionality.

REV. MILLER: Regulation by civil authorities is recognized by most religious groups, with some exceptions. My group recognizes the function of civil government in regard to solemnization of marriages.

The Redwood City Ministerial Association, with a representative present, stated that they would support the bill as amended.

Mr. Charles Severns, Executive Secretary of the Christian Churches of Northern California, was present at the hearing and stated that his group has not had an opportunity to discuss the bill, but felt that they would favor it as amended. They had no statistical information, but felt the need for some regulation. That if the Secretary of State would have difficulty in determining bona fide clergymen or denominations then this would simply imply that anyone who would choose to claim this can perform a marriage and that's the basis upon which marriages are now performed in many instances.

SENATOR BEARD: What is the position of a retired minister?

MR. SEVERNS: There is a difference between a retired minister and one operating a marriage mill under the guise of a church. Marriage mills existed in San Diego when I was there.

Galen Lee Rose, D.D., Executive Secretary of the Sacramento Council of Churches, Chairman of the Committee on Legislation and Public Morals, Northern California Council of Churches, presented the following statement:

"I objected in 1957, with Rev. Miller, to the ordained minister classification and designation by the Secretary of State. It seemed an invasion of the church by the State, but since marriage is a civil function I feel the State has the responsibility of knowing who shall perform this rite. I feel it is significant to register ministers. There are rackets in religion as well as elsewhere and there should be no objection on the part of a clergyman to register. Registration in one county should be sufficient so that he could perform marriages elsewhere if visiting."

Senator Beard inquired as to whether we would not be creating more problems, from a legal point of view, than we now have.

Mr. Rose replied that we should look to the experience of states having this type of legislation. Since a number of states have adopted this type of legislation apparently the difficulties are not insurmountable.

Senator Beard asked whether the bill should have a penal provision attached to it to the effect that one knowingly or willfully performing a marriage without previously being licensed should serve six months or pay a fine.

Mr. Rose replied that he had not considered this point, but didn't feel the penal provision necessary, that it would be a matter of publicizing the law through the various denominations when it goes into effect. Suggested a warning of some sort.

Senator Dorsey inquired whether it would not be possible for the various ministerial associations to register or certify those eligible to perform marriages, without involving the secretary of state or county clerks, and in that way avoid the constitutional question.

Mr. Rose stated that the Nevada law makes some such provision as that. Also that his concern is primarily that there be a certification with the County Clerk's Office.

Senator Beard inquired whether the various ministerial associations could obtain a list of marriage mills existing in the state and have some definite statistics in order to know what the problem is.

Mr. Rose replied that he understood the problem was more prevalent in the southern part of the state, but thought it might be possible to obtain some information.

Mr. John Martin Hoffman, Committee on Publication for Christian Science Church, Northern California, then testified that the bill doesn't accomplish the thing that is intended. It doesn't require return of any certificate of a marriage performed or that a ministerial person be careful enough to even think of sending one back. The important thing is to get these marriages recorded. Mr. Hoffman informed committee that he had practiced law in Alameda County for 25 years and had, during that time, handled as many as 100 marital cases in one year and never was faced with the problem of failure of ministers to record a marriage. Felt that the bill places California in the position of regulating a religious sacrament. Informed the committee that the Christian Science Church does not perform marriage ceremonies and this bill would not affect them in any manner.

This bill permits the State to tell an individual that he cannot perform a function of his church in the practice of his religion. It is simply the State entering into the practice of religion.

Mr. Hoffman raised the position of retired ministers who are often called upon to perform marriage ceremonies and that the Secretary of State or county clerks should not determine whether or not he can perform the ceremony. This bill does not assure or require that the law will be complied with in having the certificate returned. This could be handled in a perfectly simple manner from a legal standpoint. When a county clerk issues a marriage license there could be appended to that license a portion of it which would be detached and given to the people to be married saying "This has to be recorded." Then you report it to the county clerk yourself and then if the minister doesn't report it the county clerk can then check up and we don't have the State entering into the regulation of religious functions. I don't quite agree that marriage is wholly a civil matter. The State is interested, it is the third party to the marriage and interested in the status of the marriage and as such they want to know that that marriage ceremony has been performed.

Mr. Hoffman stated that it had never come to his attention that any person had been unable to get aid to needy children or attention because the minister didn't make a return on the marriage license.

Mr. Charles L. Reilly, Committee on Publication, Christian Science Church, for Southern California, stated that they would be opposed always to anything that would regulate the practice of religion in the form of a license whether the license was free or whether you receive money from the State along with the license or whether you have to buy the license because we feel that the separation of church and state is an absolute must and we would always have to take our position on that ground.

MR. BOHN: Would your objections continue if the statute were simply a registration?

MR. REILLY: I don't think there would be much difference. I think the imposing of the impediment on the practice of religion is the thing that I would object to.

MR. BOHN: Don't you think it might be desirable to at least have somewhere in the State a list of persons who are performing marriage ceremonies?

MR. REILLY: I see no objection to that as long as it does not in any way limit the right to perform the ceremony. I think that the minister of the gospel should have the right to perform the ceremony regardless of registration. Many years ago while I was still in the active practice of the law a woman came to me on a marital matter. She had been separated for many years and I asked why she had never obtained a divorce and I finally determined that she belonged to a very small group, not more than 30 persons in number that constituted themselves a church. The pastor of that group had been ordained by the group, they were a consecrated group, did not believe in divorce or in maintaining a church. They would meet in the open in proper element weather or in the homes of members of the group. To the people in that flock their minister was a man of God just as though he had been ordained by a large congregation. That man probably would refuse to recognize the registration statute. It is that type of thing that should be protected and not the marriage mill. Marriage mills can be reached by proper statutes which don't regulate religion by the State and that is what you're getting into by this particular bill.

MR. BOHN: You would be afraid of even a straight statute stating in substance that everybody who purports to be authorized to perform marriage ceremonies by his own denomination or religious group shall furnish a copy of his name and address and the name of his denomination to some state official.

MR. REILLY: I don't know that I would be against something that was as innocuous as that. I would like to think about it.

MR. BOHN: The reason I asked the question is that one of the earlier witnesses talked in terms of registration. I don't know whether he had that simple a thing in mind or whether he was thinking in terms of registration such as a license.

MR. REILLY: I think it would probably be all right to have a statute which would say that all those who perform marriages should register but I don't think their right to perform the marriages should be limited if they don't.

The question would always be raised—you would always be opening an area of strife between denominations as to whether this denomination thought that one was a denomination or the like. I wonder unless the abuses are way out of hand whether it is a safe area for the State to get into at all.

Senator Beard then stated that his county bordered on Yuma and since they have done away with "quickie" marriages there he has heard complaints from ministers that one of the marrying officials from there has moved to our side and through an arrangement can obtain quick marriages. He inquired as to whether Mr. Reilly would oppose legislation if this were found offensive or illegal, either at the county level or the state level.

Mr. Reilly advised that he appreciated the problem itself and their only objection was to the licensing of the practice of religion. That licensing of ministers, etc., would not guarantee recording of marriages. If a bill is put up to decide that only certain classes of individuals can perform marriages he is not sure they can avoid abuses. He wonders whether an enlightened clergy cannot take care of this. Wonders if we are not entering a field of censorship of some kind here.

Rev. John W. Pressly, representing the Presbyterian denomination, and located in Sacramento, told the committee of his experience in Oregon. Stated that registration was required in Oregon and it worked very well there. He was to perform a ceremony in Portland and had never lived there. It was no problem to register in order to perform the ceremony. The man who spoke just now is mistaken in believing that a man who is retired would not be allowed to perform ceremonies. Retired ministers are performing ceremonies in Oregon every day. There is no problem there at all and any recognized religious group or any man of any recognized denomination can register and perform marriages. County recorders have told him that they have received certificates from ministers that were not legible and this would overcome that. Felt that the greatest thing that would be accomplished would be that marriages would be recorded.

Senator Dorsey questioned who would determine whether the denomination was recognized, and that would go to the question of who should perform the marriage.

Mr. Pressly pointed out that even under present law a person is violating the law when he performs marriages and is not a minister of the gospel, and that some determination must be made by someone that the law has been violated.

Senator Dorsey replied that the so-called marriage would be void if not performed by those enumerated under present law. Felt there are few situations like this.

Mr. Pressly stressed that size of denomination should have no bearing on it and all should be permitted to perform ceremonies.

MR. BOHN: The problem seems to arise when you get into the term "recognized denomination" and there could be situations where small groups of 30 or 500, who in all sincerity had a religious group and it was new and the rest of us might think to ourselves whether we said it or not that actually it doesn't follow any pattern of religion that we are familiar with and yet, I gather it is the intent of the present law that if in fact the denomination itself recognizes the person as being a minister that that would suffice so far as the State is concerned. So I'm wondering if the objective you have in mind as to recordation of these marriages couldn't be hit in another way by a straight registration. What would be your views on that?

MR. PRESSLY: I would favor registration instead of licensing. I think that that would be preferred. I don't quite understand the difference in designation of the two, but I like the term registration better.

MR. BOHN: The significance that I had in mind in using the two terms is that in the case of registration it would simply be a mechanical act—a person's name would be put on a list somewhere and he states that he's a minister or his group states that he is a minister, with no

body having the power to say, "You can't perform a marriage." The implication that arises in my mind when you use the term "licensure" is that if a certain person has the right to grant a license he has certain responsibilities and by implication he has the right to deny it and having the right to deny it you then get into the questions of the tests that he uses in denying it.

Mr. Glen Rinard, representing the Friends Churches of the California Yearly meeting of the Friends and was asked by his church office to attend hearing and speak on behalf of their denomination. Although they had not considered the subject they felt that the designation by the Secretary of State would be vested in said officer a power which might sometime be abused and as the proposed bill now stands would not be entirely satisfactory.

Mr. Bohn inquired whether his group would object to any sort of procedure which would identify persons performing marriage ceremonies.

The response was that they would not object to some form of registration.

Mr. R. J. Thurmond, an officer of the Assemblies of God, representing northern California area. Recently held a board meeting. Also stated that they were a member of the group for which Dr. Galen Lee Rose speaks. Further advised that their own board had not yet had an opportunity to consider the bill since it had only recently been brought to their attention.

Mr. Thurmond questioned the word "active" as it refers to clergymen in Section 70.5 of the bill, particularly where a minister becomes ill and cannot serve a congregation for several years or is a retired minister. Would like the meaning of the word explained. Also, Mr. Thurmond explained that they have a three-year training program for ministers and also a four-year program, after which a minister is licensed. However, they have the further requirement that he serve a two-year period as either a pastor or assistant pastor. During this period we permit the ministers to perform marriages. If the words "or otherwise accredited" would cover these men then it would suffice, but it should be clarified and not left to the discretion of the County Clerk or Secretary of State. It might give rise to bias in interpretation and should be clarified.

Mr. Thurmond pointed out that there is a law in existence presently providing for a penalty for failure of filing the certificate of a marriage ceremony within a certain number of days. Also, that they have had no problems arising in this area and did not object to licensing as such if there were not too many complications. He agreed that ministers do make errors and fail to file certificates at times, pointing out that his own sister's marriage had not been properly recorded and it entailed complications and it had to be straightened out in order that she be able to take advantage of certain legal rights of inheritance.

In a general sense, there might be some need to correct laws relating to incorporating, because three people can incorporate under our law and start a school, create the privilege to ordain etc. and it is sometimes abused.

Senator Dorsey then read into the record the names of the following groups, who had registered opposition to the bill:

Greater Bakersfield Ministerial Association—17 members
 Indian Wells Valley Ministerial Fellowship—approx. 20 members
 Evangelical Ministers—15 to 17 members
 Arvin Ministerial Association

Senator Beard then announced that pending the receipt of an opinion from the Legislative Counsel this subcommittee will present a full report to the Full Judiciary Committee and all those interested would be notified of further hearings.

The following letter was submitted as part of the record of this hearing:

SACRAMENTO, CALIFORNIA
 September 29, 1958

THE HONORABLE JOHN WILLIAM BEARD, Chairman
*The Senate Interim Judiciary Sub-Committee on Civil Code,
 Civil Actions, and Civil Procedure*
Senate Office Building
Sacramento 14, California

DEAR SENATOR BEARD: I wish to express my thanks to you and the members of your committee for the opportunity to file with the committee a statement pertinent to proposed legislation dealing with the licensing of ministers for the performance of marriage ceremonies, as set forth in Senate Bill No. 2312 of the 1957 session. The general intent and purpose of the legislation are commendable. There are, however, certain problems involved in the specific legislation.

I have requested comment in regard to this proposed legislation from our attorneys. In reviewing the legislation they raise questions concerning Constitutionality. In general terms their comments are as follows.

Statutes which require either the registration or the licensing of ministers of religion as a prerequisite for the right to officiate at marriage are to be found in at least 14 states, the District of Columbia and Hawaii. These jurisdictions are as follows: Arkansas, Delaware, District of Columbia, Hawaii, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nevada, New York, Ohio, Oklahoma, Oregon, Rhode Island, Virginia and Wisconsin.

These statutes appear to have a similar objective: to guard against performance of the marriage rite by mere interlopers in the guise of ministers of religion. Likewise, as stated in the statute of the District of Columbia, they may also be considered as of assistance "in preserving the evidence of marriage." There is considerable variance as to form and application. The simplest pattern is that which merely calls for the registration of ministers who are eligible under the rules of their denomination to perform the marriage ceremony. Statutes of this limited type are found in Delaware, Louisiana, Massachusetts and Oklahoma.

In other statutes some form of license or certificate is issued to the minister. Most of these statutes appear to make the issuance of such license or certificate mandatory on the public official involved, who may be the clerk of a court, county or town clerk, or an official of the public health department, on a showing that the applicant is a minister of a religious denomination. The Nevada statute is cited as an example in this category. Kentucky requires that the applicant be "of good moral character." Several statutes require specifically that he be "in communion with his church," or otherwise that his bona fide as a minister be established. Some require that evidence be furnished to this effect, for instance a statement by the bishop or other church official. In fact, this latter element is probably basic in the purpose of the statutes, as indicated by the Supreme Court of New York in *O'Neil v. Hubbard*, 40 N.Y. Supp. 2d 202. This showing of bona fide status as a minister could probably be required even under those statutes which call merely for registration.

Two states, Kentucky and Virginia, require the applicant to furnish bond that he will not violate the marriage laws of the jurisdiction.

The various statutes have at sometime been subject to litigation. In particular, the status of the religious denomination in question was involved in two cases, *O'Neil v. Hubbard*, and *State v. Givens*, 114 N.E. 2d 729 (Ohio).

The *O'Neil v. Hubbard* case involved the New York statute in its form as of the time thereof. It provided that marriages might be celebrated by "a clergyman or minister duly ordained and affiliated with any religion which is listed in the preceding census of religious bodies." The action involved a petition by a minister of the Church of Christ Composed of Disciples to compel his registration.

The Supreme Court of the state expressed the view that the objective of the legislation, to prevent interlopers from officiating at marriages, was good, but it went on to say:

"The adoption of the census listing as the standard of acceptability, however, renders the statute itself constitutionally unsatisfactory. The federal census report of religious bodies admittedly does not purport to contain a complete and exhaustive enumeration... an unorganized religious body or sect, though not enumerated by the census taker, is guaranteed the same degree of freedom in religious worship as is assured to larger denominations..."

The New York statute has since been amended to provide that to be registered the minister must be affiliated with a denomination operating under the Religious Corporations Law. Sections 11 and 11b, Domestic Relations Law. This new statute may perhaps continue the same vice under other language, but it has not been judicially challenged.

A similar point was involved in *State v. Givens*, supra, where mandamus was filed by a minister of Jehovah's Witnesses to compel issuance of a certificate. The Supreme Court of the state propounded only a very brief per curiam decision, ruling that a certificate should have been issued when "relator presented credentials showing that he was a 'regularly ordained minister of his religious society,'" this being taken from the qualification established by the statute.

On the basis of the foregoing, our attorneys, in commenting specifically on the provisions of Senate Bill No. 2312, make the following objections: The legislation proposed is broader than the typical statutes in effect in other states. It also has serious constitutional defects; for example, the requirement that the licenses be issued only to ministers and priests who are members of "recognized religious denominations" is highly vulnerable, particularly when it is read in conjunction with the provision that the Secretary of State determine the "recognized religious denominations." There are no standards set forth to limit the discretion of the Secretary of State in making his determination. His uncontrolled discretion would seem to conflict with the First Amendment to the Federal Constitution and its counterpart in the Constitution of the State of California. A statute somewhat similar to the provisions of Senate Bill No. 2312 was declared unconstitutional in the State of New York. This statute provided that ministers and priests could secure licenses provided that they were members of religious denominations listed in the last official census. The court held that this statute involved a violation of freedom of religious worship. Similarly, it is our considered opinion that the proposed bill would involve a violation of the religious liberty clause of the First Amendment and constitutionally might be construed to constitute state recognition of religion amounting to establishment.

While we point out what we believe to be serious faults in the proposed legislation, we are in sympathy with the intent of the committee to remedy abuses in the so-called marriage mills. We are most desirous to work with the committee in developing legislation which will achieve the desired end without raising constitutional objection.

Sincerely yours,

WILLIAM R. BURKE

3. PRELIMINARY CONSIDERATION OF PROPOSAL BY FULL COMMITTEE

At a meeting of the full Interim Judiciary Committee on September 5, 1958, the subject of this bill was considered. The subcommittee reported the results of its hearing on the previous day and it was determined that the Legislative Counsel be requested to give an opinion on the question of constitutionality. It was further recommended that if such opinion were favorable that a new bill be drafted and the matter set for future hearing. It was also suggested that copies of the new bill be forwarded to all interested groups or persons prior to the hearing in

order that they might attend and express their views either for or against the proposal.

The following is the Legislative Counsel's opinion on the question of constitutionality of the proposed bill.

SACRAMENTO, CALIFORNIA
November 10, 1958

HON. EDWIN J. REGAN
Chairman, Senate Judicial Committee
Weaverville, California

Marriage—No. 4404

DEAR SENATOR REGAN: Mr. Andrew Oppmann has submitted to this office a letter from Mr. John Bohn asking us, in your behalf, to draft a bill that would require, among other things, that clergymen register with the Secretary of State as a condition to performing marriage ceremonies in this State. Failure to register would constitute a criminal offense.

While we have found no case either upholding or invalidating a provision of this nature, we believe that its constitutionality is open to doubt. The marriage ceremony itself is regarded by some denominations as a religious rite and the clergyman performing such a ceremony might well be held to be performing a religious rite. While there are cases upholding laws requiring a license or permit as a condition precedent to using the public streets or parks for religious ceremonies (*Cantwell v. Connecticut*, 310 U.S. 296; *Poulos v. New Hampshire*, 345 U.S. 395), we doubt that these cases could be used to sustain a statute requiring a license as a condition precedent to performing a religious rite in a temple, church, or synagogue. It is possible to view the bill requested as being a statute of the type last mentioned. Even though the bill itself does not confer discretion on an administrative official to refuse to register any clergyman who applies, this fact would not, in our opinion, eliminate the constitutional problem (see, for example, *Thomas v. Collins*, 323 U.S. 516).

We do not mean to imply that a statute requiring a clergyman to register prior to performing marriage ceremonies could not be drafted in such a manner as to eliminate possible constitutional objections on religious grounds. One possible approach would be to withhold state recognition of any marriage ceremony performed by a clergyman who is not registered. The State has broad authority to regulate marriage (*McClure v. Donovan*, 33 Cal. 2d 717; *Stokes v. County Clerk of Los Angeles County*, 122 Cal. App. 2d 229), and undoubtedly may withhold recognition of marriages not performed in compliance with the applicable statutes (*Norman v. Thomson*, 121 Cal. 620). Under such a statute a clergyman would not be prevented from performing a religious ceremony, but such a ceremony would have no civil status unless the clergyman is registered in accordance with law. There would then be no question that the State is attempting to make the performance of a religious rite dependent on a state license or permit.

In addition, there could be inserted into the statute a requirement that a clergyman who performs a marriage ceremony, without having registered, is obliged to inform the parties that their marriage will not be valid for civil purposes. Failure to comply with this requirement could be made a criminal offense. Here, again, we see no question that the State would be attempting to infringe on the religious freedom of the persons involved.

We have discussed this matter with Mr. Oppmann, who, in turn, has called it to the attention of Mr. Bohn. As a result, a request has been made to draft a bill along the lines last mentioned, so as to eliminate so much of the original bill as would create a constitutional problem. A draft of such a bill is enclosed.

The bill would require clergymen to submit to the Secretary of State, in writing, an application for registration, showing the clergyman's full name and home address, his usual signature, his religious denomination, and the address of his church. He would also be required to submit a statement from the governing body of his denomination attesting to his authority to perform marriage ceremonies. Upon receipt of a properly completed application and statement, the Secretary of State would be required to issue a certificate of registration to the clergyman, and to transmit a copy thereof to the county recorder of the county in which the clergyman's church is located. The Secretary of State would also be required to number the certificates issued by him in the order in which they are issued, which number would be shown on the certificate of registry and on the endorsed marriage license.

The bill further provides that if a clergyman moves to another county or changes his denomination, he must file a new application for registration in the manner and subject to the requirements prescribed with respect to his original application.

While the bill provides that it shall not be construed to prevent religious marriage ceremonies, it expressly states that a marriage ceremony performed by an unregistered clergyman is not valid for civil purposes. Moreover, it requires an unlicensed clergyman, prior to performing a marriage ceremony to inform the parties that their marriage will not be recognized for civil purposes. A failure to make such disclosure will subject the clergyman to criminal prosecution.

In addition, the bill provides that marriage licenses shall expire 90 days after the date of their issuance, and requires that this fact be shown on the face of the license. In this same connection, it requires the county clerk to transmit each day to the county recorder a list of all marriage licenses issued on that day. The county recorder would then be required to notify the license holders on the 30th day before the expiration of their license that no record of the marriage has been received, if that be the case, and to advise them that their license will be canceled automatically in 30 days if not used within that period. The county recorder would also be required to notify the license holder of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within four days after the ceremony.

Finally, the county recorder would be required to examine each certificate of registry and marriage license filed with him by a clergyman to ascertain whether the clergyman is registered. If it is determined that the clergyman is not registered, it would be the duty of the county recorder to inform him that unless he registers marriages performed by him will not be recognized for civil purposes. The county recorder would also be obligated to inform the clergyman of his duty to inform the parties that their marriage will not be recognized by the civil authorities, and that failure to furnish such information constitutes a criminal offense.

The bill would become operative one year after its effective date. Mr. Bohn suggested this in order to give existing clergymen a reasonable time in which to comply with its terms. To give clergymen ordained subsequent to the operative date of the bill time to register, a 60-day period is prescribed.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By EDWARD K. PURCELL
Deputy Legislative Counsel

4. FULL COMMITTEE HEARING

The subject of Senate Bill 2312 was again set for hearing of the full committee on December 6, 1958, at the State Building, Los Angeles.

Present:

Senator Stanley Arnold, Acting Chairman.

Senator Nathan Coombs.

Senator Fred Farr.

Senator John A. Murdy, Jr.

Committee Counsel, John A. Bohn.

Witnesses:

Ray E. Lee, County Recorder, Los Angeles County.

Rev. W. L. Martin, A.M.E. Church, Los Angeles.

Rev. Louis H. Owens, African Methodist Episcopal Church, Los Angeles.

Col. W. J. Parkins, Salvation Army, Los Angeles.

Rev. R. J. Thurmond, Assemblies of God, Northern California.

Organizations and others in attendance:

Rev. C. Walter Perry, Committee on Ministry, California Yearly Meeting of Friends, Inglewood.

Rev. Andre Diaconoff, Church of the New Jerusalem (Swedenborgian) Los Angeles.

Major T. V. Barry, Salvation Army, Los Angeles.

Col. W. J. Parkins, Salvation Army, Los Angeles.

S. L. Beaudry, Redondo Beach.

L. Halvorson, Assemblies of God, Southern California.

James G. Fowler, County Recorders Association, Santa Barbara.
Ted R. Carpenter, County Recorder, San Bernardino.
Jack Brown, County Recorder, San Luis Obispo County.
Robert L. Hammi, Clerk-Recorder-elect, Ventura County.
W. W. Sunkel, County Recorder, Tulare County.
James T. Jones, Assistant County Recorder, Tulare County.
Rev. Louis H. Owens, African Methodist Episcopal Church, Los Angeles.

The new text of the bill drafted by the Legislative Counsel and considered at this hearing is set forth as follows:

An act to amend Sections 70, 73, and 79 of, and to add Sections 69.5, 70.5, 71.5, and 73.5 to, the Civil Code, and to amend Section 10350 of the Health and Safety Code, relating to marriage.

The people of the State of California do enact as follows:

SECTION 1. Section 69.5 is added to the Civil Code, to read:

69.5. A license issued pursuant to Section 69 shall expire 90 days after the date of its issuance, which fact shall be clearly noted on the face of each such license.

The county clerk shall transmit each day to the county recorder a list of all marriage licenses issued on that day. The county recorder shall notify the licenseholders on the 30th day before expiration of their license that no record of the marriage has been received, if that be the case, and shall advise them that the license will be canceled automatically in 30 days if not used within that period. The county recorder shall also notify the licenseholders of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within four days after the ceremony.

SEC. 2. Section 70 of said code is amended to read:

70. Marriage may be solemnized by either a justice of the Supreme Court, justice of the district courts of appeal, judge of the superior court, judge of the municipal court, judge of a justice court, or a priest or minister of the gospel of any denomination, of the age of 21 years or upwards, registered as provided in Section 70.5.

SEC. 3. Section 70.5 is added to said code, to read:

70.5. In order to solemnize marriages in the State, which will be recognized as valid for civil purposes, a priest, minister, or clergyman shall submit to the Secretary of State, in writing, an application for registration, showing his full name and home address, his usual signature, his religious denomination, and the address of his church. The application shall be accompanied by a statement from the governing body of the applicant's religious denomination attesting to his authority to perform marriage ceremonies.

Upon receipt of an application and statement meeting the requirements of the section, the Secretary of State shall issue a certificate of registration to the applicant, and shall transmit a duplicate copy thereof to the recorder of the county in which the applicant's church is located for filing in the recorder's office. The Secretary of State shall number certificates of registration consecutively in the order in which they are issued.

If the church address of the applicant is changed to another county, or if the applicant changes his religious denomination, he shall file a new application for registration in the manner and subject to the requirements prescribed for his original application.

Nothing in this chapter shall be construed to prevent the performance of a religious marriage ceremony by a priest, minister, or clergyman not registered as provided in Section 70.5. However, no marriage performed by such a priest, minister, or clergyman shall be recognized for civil purposes.

Any priest, minister, or clergyman authorized by his denomination after the operative date of this section to perform marriage ceremonies, shall comply with the requirements of this section within 60 days after receiving such authorization.

SEC. 4. Section 71.5 is added to said code, to read:

71.5. A priest, minister, or clergyman who has not registered as provided in Section 70.5 shall, prior to performing a marriage ceremony, notify the parties that their marriage will not be recognized for civil purposes. Failure on the part of such a priest, minister, or clergyman to comply with this section constitutes a misdemeanor.

SEC. 5. Section 73 of said code is amended to read:

73. The person solemnizing a marriage must make, sign and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Public Health showing:

1. The fact, time and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony.
3. A statement of the official position of the person solemnizing the marriage, or of the denomination of which said person is a priest or minister, *and the number of the certificate issued to such person pursuant to Section 70.5.*

The marriage license, thus endorsed, shall be returned to the local registrar for marriages (county recorder) of the county in which the license was issued within four days after the ceremony.

SEC. 6. Section 73.5 is added to said code, to read:

73.5. The county recorder shall examine each certificate of registry and marriage license filed with him by a priest, minister or clergyman pursuant to Sections 69a and 73, respectively, to ascertain whether the priest, minister, or clergyman is registered as provided in Section 70.5. If the county recorder determines that the priest, minister, or clergyman is not registered, he shall inform him that unless he registers, marriage ceremonies performed by him will not be recognized as valid for civil purposes, and that he is obliged to inform the parties of this fact or suffer criminal prosecution.

SEC. 7. Section 79 of said code is amended to read:

79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman *registered under Section 70.5.* A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made.

SEC. 8. Section 10350 of the Health and Safety Code is amended to read:

10350. The certificate of registry of marriage shall contain as nearly as can be ascertained the following and such other items as the State Registrar may designate: the first section shall include the personal data of parties married, including the race or color, age, full name, birthplace, residence, names and birthplaces of the parents, maiden name of the mothers, the number of previous marriages, marital status, and the maiden name of the female if previously married; the second section shall include the signatures of parties married, license to marry, county and date of issue of license, and the marriage license number; and the third section shall include the certification of the person performing the ceremony, which shall show his official position including the denomination if he is a priest or minister *and the number of the certificate issued to him under Section 70.5 of the Civil Code,* and the signature and address of one or more witnesses to the marriage ceremony.

SEC. 9. This act shall become operative one year after its effective date.

The meeting was called to order by the chairman and Senator Murdy then briefly reviewed the background of the bill. Mr. Andrew Oppmann then read the bill into the record and pointed out that 17 states had some form of registration procedure along this line.

The following amendments were then made to the new bill and unanimously approved by vote of the committee:

1. In Section 70 following the words "judge of a justice court" add the words "provided however that no fee or gratuity shall be allowed such official."

2. In Section 70.5, the third paragraph from top of page 3, delete the following words: "However, no marriage performed by such a priest, minister or clergyman shall be recognized for civil purposes."

3. Also, that if county recorders should be permitted to perform marriage ceremonies that they not receive a fee or gratuity for performing such service.

Questions were raised with respect to the following provisions of the amended and revised bill:

1. Section 70.5: There were questions raised as to whether this section would prevent retired ministers or those holding executive positions within a church organization from performing marriage ceremonies, which is currently the practice.

Committee counsel advised that if the bill was otherwise satisfactory that this section would have to be revised to correct this uncertainty.

2. In Section 69.5, which requires the county recorder to notify license holders 30 days prior to expiration of the license that no record of the marriage has been received, has been questioned by the County Recorder of Los Angeles County, Mr. Ray Lee, in that it would be time-consuming and expensive and should be eliminated from the bill.

3. The advisability of changing the time period in which a blood test must be taken. Committee counsel pointed out that under existing law a person can take a blood test, apply for a marriage license and get married one, two or three years later. Also, that even under the proposed bill here there would be a period of 120 days that could expire between the taking of the blood test and the solemnization of the marriage. Senator Murdy then explained that correction of this problem should be done with a separate bill so as not to complicate this bill which is primarily aimed at registering clergymen.

4. A telegram from S. G. Posey, Secretary-Treasurer of the Southern Baptist General Convention, Fresno, California, protested "vehemently" Section 79 of the proposed bill, which is on page five of the bill. Committee counsel then explained that this section is now in the law and the only new language added by this bill is that underlined which reads "registered under Section 70.5" in order to tie into the previous code section.

Committee counsel noted for the record that about 150 notices had been mailed to all the denominations that could be found and to the best of our information the proposed bill was sent to all who might be affected by it.

Mr. Bohn then read into the record the following letters received with regard to the bill:

1. Letter from William R. Burke, Public Relations Counsel of the Catholic Education and Welfare Organizations, which reviewed the law of other states with regard to registration or licensing of clergymen. This letter referred to the original bill and not to the revised version which was considered at the hearing on December 6, 1959. The last paragraph of the letter reads as follows:

"While we point out what we believe to be serious faults in the proposed legislation, we are in sympathy with the intent of the committee to remedy abuses in the so-called marriage mills. We are most desirous to work with the committee in developing legislation which will achieve the desired end without raising constitutional objection."

A copy of the new, revised bill was forwarded to Mr. Burke on November 14, 1958, but no further comments have been received from him with regard to the redrafted bill.

2. Letter from Dr. Galen Lee Rose, Executive Secretary Sacramento Council of Churches, dated December 3, 1958, in support of the bill, pointing out that marriage is both a religious and civil rite and that state has responsibility to see that civil rite is performed by legally qualified person.

3. Letter from Rev. Robert A. Wells, Pastor of Narbonne Avenue Baptist Church, Lomita, dated December 2, 1958, endorsing the bill with the following suggestions: (1) The 4-day period for return of

marriage certificate should be changed to read "one week" or "seven days"; (2) Favors statewide registration with no re-registration from county to county as one moves, however, endorsed the suggestion that a change in denomination is a "must" and should be made as the bill now suggests; (3) Some provision be made for ministers who reside in another state and come here to perform a ceremony—suggested a simple "single wedding" grant of some kind.

4. Telegram from Walter H. Hellman, President, California District American Lutheran Church, 201 S. Mission Dr., San Gabriel, December 6, 1958, favoring the proposed amendments and urging enactment with such changes as may be deemed necessary.

5. Letter from W. Shelburne Brown, District Superintendent of the Church of the Nazarene, Pasadena, California, dated December 2, 1958, stating that the bill would "strengthen the marriage laws in the State of California and it also gives stability to the moral situation." Also, Mr. Brown made the following suggestions: (1) That officials of churches be included in the bill under Section 70.5 so they may perform marriage ceremonies even though they do not have a specific church, as in his case, being superintendent of a number of churches; (2) In referring to Section 70.5, the last paragraph on page two of the bill, Mr. Shelburne erroneously interpreted it to mean that the bill, if passed, would become operative within 60 days. That paragraph refers to the minister or priest's authority from his particular denomination. Section 9 of the bill on page six provides that the bill shall become effective *one year after its passage*.

6. Letter from Mr. Will Hildebrand, Superintendent of the Methodist Church, Pasadena, dated December 2, 1958, states "I believe this legislation is in the public interest and is not an unreasonable request to make of the clergy."

7. Letter from Dr. Gaylerd Falde, President, the Evangelical Lutheran Church, California District, Los Angeles, dated December 2, 1958, stating, "It seems to me that this is a good action and probably long overdue." The only question raised was with regard to clarifying the position of church executives who are now able to perform marriage ceremonies, since they are clergymen but do not have a specific church assigned to them.

8. The Salvation Army, Territorial Headquarters, San Francisco, letter dated December 2, 1958, setting forth the precepts of the Salvation Army and noting that Salvation Army officers are duly recognized as ministers of religion by various rulings of the federal government. The last paragraph of the letter reads as follows:

"The Salvation Army is in favor of the proposed bill as it protects bona fide Ministers of the Gospel and likewise makes difficult the task of any person posing as a Minister of the Gospel who is without credentials."

and was signed by Lt. Commissioner Samuel Hepburn, Territorial Commander of the Salvation Army.

9. Letter from Rev. Frederick A. Smith, Executive Director of the Luthern Welfare Service of Southern California, Los Angeles, California, dated November 29, 1958, stating, "Insofar as the registration is concerned we are in total agreement with the proposed legislation as the advantages of such restrictions have been observed in many of the

Eastern States." Rev. Smith made the following suggestions: (1) To include executive officers of churches (suggested several times herein); (2) Either substitute or add the word "headquarters" in Section 70.5, such as "address of his church *or official headquarters*"; and (3) That at the end of Section 70.5 it might be well to require that the statement bear the seal of the governing body (I presume he is referring to the governing body of the particular church).

10. Letter from Rev. James P. Shaw, Acting Director, Diocese of California, Department of Christian Social Relations, 1055 Taylor Street, San Francisco, dated December 1, 1958, stating that he had reviewed the proposed bill and found no objection to it.

11. Letter from Dr. Carl W. Segerhammar, President of the California Conference of the Augustana Evangelical Lutheran Church, Los Angeles, dated November 26, 1958, stating that he favored the action implied in the proposed amendments with the following suggestions: (1) That Section 70 be more explicit so as not to exclude those denominations not of the Christian faith, such as Buddhists, Jews, etc.; (2) That church executives be included in Section 70.5 and offered the following change, "his religious denomination, and the address of his church *or church office*."

12. A letter from the Rev. Forrest C. Weir, Ph.D., General Secretary of the Southern California Council of Churches, Los Angeles, dated November 21, 1958, stating he would be unable to attend, but enclosed the names of executives of local church councils who might be interested. Dr. Weir had written the committee in September 1958, indicating their interest in the proposal and the need to correct present abuses.

13. Letter dated November 20, 1958, from Mr. Leonard Palmer, Superintendent of the Assemblies of God, Northern California-Nevada District Council, Inc., Santa Cruz, stating that Rev. R. J. Thurmond of San Jose, a member of their district's executive committee, would be present at the hearing in Los Angeles. At the hearing Rev. Thurmond favored the legislation with suggestion that a change might be made in the requirement of re-registering in a county to which a minister has been transferred. He stated that they have about 700 churches throughout the State and there are frequent transfers and this requirement might create a considerable amount of clerical work.

NOTE: It might be stated here for the information of the full committee, that notices were sent to Buddhist churches, Jewish congregations, Mormons, etc. In other words, all we could possibly determine from inquiry and the telephone books of various areas throughout the State of California.

It might also be noted that two representatives of the Christian Science Church attended the hearing in Sacramento on September 4, 1958. (Their testimony is set forth in the transcript of that hearing.) They were concerned with certain provisions of the original bill, noted that their church does not perform marriage ceremonies and did not respond to the new bill that was sent to them in November 1958.

The following is a proposed bill on this subject presented by the County Recorders Association and discussed by their representative, Mr. Ray E. Lee, Los Angeles County Recorder:

An act to amend Sections 70, 73, and 79 of the Civil Code, and Section 10350 of the Health and Safety Code, and to add Section 70.5 to the Civil Code, Section 360.5 to the Penal Code, and Section 27377 to the Government Code, relating to marriages.

The people of the State of California do enact as follows:

SECTION 1. Section 70 of the Civil Code is amended to read:

70. Marriage may be solemnized by either a justice of the Supreme Court, justice of the district courts of appeal, judge of the superior court, judge of the municipal court, judge of a justice court, *county recorder, priest, [or] minister, or clergyman* of the gospel of any denomination, of the age of 21 years or upwards, *registered as provided in Section 70.5.*

SEC. 2. Section 70.5 is added to the Civil Code to read:

70.5. In order to solemnize marriages in this State, a priest, minister, or clergyman shall file with the county recorder of the county in which he resides a written application showing his full name and home address, his usual signature, his religious denomination and the address of his church.

Upon receipt of the application the recorder shall number it and issue a certificate of registration to solemnize marriages in this State in the name of the applicant showing the date of issuance and registration number.

If the church address of the applicant is changed to another county, or if the applicant changes his religious denomination, he shall file a new application for registration in the same manner as prescribed for his original application.

A certificate of registration shall be valid for a period of 10 years. A new certificate of registration must be obtained on or before the expiration of an existing certificate to comply with the requirements of this section.

No fee shall be charged by the recorder for the certificate issued pursuant to this section.

SEC. 3. Section 73 of the Civil Code is amended to read:

73. The person solemnizing a marriage must make, sign and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Public Health showing:

1. The fact, time and place of solemnization; and

2. The names and places of residence of one or more witnesses to the ceremony.

3. A statement of the official position of the person solemnizing the marriage, or of the denomination of which said person is a priest or minister, *and the number of the certificate issued to such person pursuant to Section 70.5.*

The marriage license, thus endorsed, shall be returned to the local registrar for marriages (county recorder) of the county in which the license was issued within four days after the ceremony.

SEC. 4. Section 79 of the Civil Code is amended to read:

79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman *registered under Section 70.5.* A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made.

SEC. 5. Section 10350 of the Health and Safety Code is amended to read:

10350. The certificate of registry of marriage shall contain as nearly as can be ascertained the following and such other items as the State Registrar may designate: the first section shall include the personal data of parties married, including the race or color, age, full name, birthplace, residence, names and birthplaces of the parents, maiden name of the mothers, the number of previous marriages, marital status, and the maiden name of the female if previously married; the second section shall include the signatures of parties married, license to marry, county and date of issue of license, and the marriage license number; and the third section shall include the certification of the person performing the ceremony, which shall show his official position including the denomination if he is a priest or minister, *and the number of the certificate issued to him under Section 70.5 of the Civil Code,* and the signature and address of one or more witnesses to the marriage ceremony.

SEC. 6. Section 360.5 is added to the Penal Code, to read:

360.5. Failure on the part of any priest, minister, or clergyman to comply with the provisions of Sections 70.5, 73, or 79 of the Civil Code constitutes a misdemeanor.

SEC. 7. Section 27377 is added to the Government Code, to read:

27377. The fee for solemnizing a marriage is \$5.

SEC. 8. This act shall become operative January 1, 1960.

Ray E. Lee, County Recorder of Los Angeles County, testified as follows:

Recorders are familiar with problems of certificates of marriages that are not properly completed. They have to examine them to see if the signature is a valid one and they have nothing to go on, no check point.

The county recorders have drawn a bill which they feel would alleviate many of the problems that do exist. The attempt to determine who is a minister or priest or clergyman is almost an endless task because each type of religious denomination has a different type of individual who is qualified to perform marriages.

A list of some of the titles is: a canon, a chancellor, a clerk, a district superintendent, a presbyter, a professor of religion, a state president, a vicar and many others. Also, there are many different churches and Mr. Lee exhibited pages of them.

We are concerned with protecting the bride and groom and their marital status and believe there should be some limitation on the length of time that a marriage license can be used and does not agree with the time that one recently was used that had been issued 14 years before. I am not certain that the 90-day limitation in the proposed bill is a good limitation because many ministers might have difficulty determining that the 90 days were up.

Suppose the license is used 92 days after issuance. Is the marriage legal? Is it valid? We can see many problems with this 90-day limit and suggest either a six-month or one-year period.

MR. BOHN: How many marriage licenses were issued in Los Angeles County in 1957?

MR. LEE: 38,500 in 1957.

MR. BOHN: How many were recorded as having been performed?

MR. LEE: About 37,500 in round figures, about 1,000 less.

MR. BOHN: Then there are 1,000 that nobody knows what happened to, is that correct?

MR. LEE: Yes.

MR. BOHN: Has any study been made in an attempt to determine the number or proportion in that 1,000 where people just didn't get married and the proportion where they probably got married but the minister failed to return it.

MR. LEE: We conducted a study in the spring of 1957. We checked with the county clerk as to marriage licenses issued in 1955. The indexes are tabulated by index machine cards from all the branches. 1956 wasn't ready yet so we took 1955. 100 names were selected that appeared on the indexes of marriage licenses issued but did not appear on the recorded index, which are also made by the tabulating card index system. Of the 100 names, 19 actually had been recorded but under slightly different names, such as the license read "Mary Ann Black" and was recorded as "Ann Mary Black," so those were eliminated from the 100 names selected as a sample, which left 81. 26 were undelivered. We made the test trying to locate them by writing to the ladies. The tone of the letter read "if you did not use the marriage license you may destroy this letter." We assumed that 26 had not used the marriage license and therefore they were eliminated from the return and that dropped it to 55. Of the 55 there were 16 who stated that they

had been married and in checking through they referred to the minister and we contacted them and they had been married and we determined that 16 out of the 55 that actually were surveyed and by using that basis for the number of unreturned licenses in that year we made a very rough estimate that one in 100 licenses was not being recorded at that time. The best we could do was to get more informational material to the ministers and we made a form that showed the penalties now provided in the Penal Code and on the front the instructions for completing the marriage certificate and the county clerk co-operated and gave it to each applicant for a license and we believe that this did help reduce the number that were not being recorded, but no check has been made since then.

MR. BOHN: I'm trying to follow these percentages and even assuming that this 26 percent had not used their license, which perhaps is not quite a fair assumption, I make it 16 percent out of 100 that had been married and had not been returned.

MR. LEE: Oh no, 19 that were found should be eliminated from the survey, which is then reduced to 81. The 26 came back undelivered and they assumed that those if they could have followed them up and located them then possibly they might not have used their license. They should be eliminated from the survey because they did not have the opportunity to tell us one way or the other whether they were used, so the survey was reduced from 100 to 55, a ratio of 16 against 55, which is 1 to $3\frac{1}{2}$ and then based on the number that were licenses issued that year against the licenses recorded that year.

MR. BOHN: I follow your mathematics but it seems to me that you are dealing with a total of 100 which you have selected at random and of that 100, 16 or 16 percent had been married and the license had not been returned.

MR. LEE: I don't make myself too clear. 45 of those we should not have sent out because we do not know about 45, so actually we are only dealing with 55 instead of the 100.

MR. BOHN: I understand your mathematics. I'm not sure I agree with it because as near as I could see . . . Assuming that this was a fair test, if you picked 1,000 you would then have 160 who would be in the same situation as this 16 out of 100 and if you picked 10,000 etc. Is that an unfair analysis?

MR. LEE: I don't make myself too clear apparently. We started with a sample of 100 because we were unable to locate them in our records. However, after they had returned the information to us we located 19 and that eliminated 19 that were recorded and they should not have been counted in the 100. Then of the others 26 that came back undelivered I don't know how we could consider them in the survey as we can't get any expression from the people so we feel that they should be eliminated. We contacted 55 people. Of the 55 there were 16 that did come back and they said they had been married and their marriage had not been recorded, so we felt that the sample had then been reduced to only the 55 that we had contacted, of which 39 had thrown the letters away because they had not used the license.

SENATOR MURDY: Your percentage is much greater than the 16 percent that Mr. Bohn is talking about.

MR. LEE: It's 16 of 55 unrecorded or unused licenses.

SENATOR MURDY: Which will give you about 30 percent.

MR. LEE: That's right, sir. In this year about 35,200 licenses were issued by the county clerk and 33,800 were recorded. A difference of 1,273. There is an overlap between the beginning and the ending of the year, however. Using those figures and figuring about $\frac{1}{3}$ of them it would be some 300 licenses, roughly, then that had been used and not recorded out of about 1,200, and since there were some 35,000 if you want to relate 300 to 30,000 it would be 1 in 100 that had not been recorded.

MR. BOHN: You're thinking of your 1 percent of the total number of licenses issued.

MR. LEE: That was the best we could reduce from a sampling.

MR. BOHN: Is it a fair statement to make that in your opinion there are hundreds of situations of this sort such as where the persons have been married and the licenses have not been returned to the county recorder?

MR. LEE: Yes.

Mr. Lee then noted that he didn't think the problem was as great elsewhere in the State as it is in Los Angeles County, due to the metropolitan nature of this county.

Mr. Lee then testified that he had records showing that a Catholic priest had brought in 15 certificates of marriage in August of 1958, dating back as far as 1954, 1955 and 1956, when he had been going through his desk had found them. Another Catholic priest who had been advised by his doctor that he might not have long to live went through his papers and found records of marriages he had performed as far back as 1937, 1938 and 1940 that had not been recorded. He brought them in, stating he thought his housekeeper was taking care of them.

He stated that many certificates come in late. The last survey showed they came in 30 days late, some 2½ years, some three months, six months or 15 months.

Mr. Lee then stated that the county recorders were offering a bill along these lines and the committee suggested that he point out the differences between his proposed bill and the one being considered.

Mr. Lee stated that their bill was primarily concerned with registering of clergymen and felt they should be registered with the county recorder because it is the recorder who must check the marriage licenses and not the county clerk. This differed with our Section 70.5, which merely states that the clergyman shall register with the county recorder and no fee shall be charged for the certificate issued.

Senator Murdy inquired whether the terminology "priest, minister or clergyman" would exclude rabbis or other groups.

The members of the committee felt that the wording of Section 70, which reads "of any denomination" would cover any group.

Mr. Bohn then advised the committee that the Jewish faith had been contacted and received a copy of the proposed bill and that no comment had been received from them. He also noted that it was the intention of this bill to include all denominations and the terminology used in the new bill had been borrowed from the terminology in the old law and the existing sections have been construed over the years to include any denomination of any kind or character by whatever term they be

known and he had no fears from a technical point of view that the terminology wouldn't cover it.

Mr. Lee then stated that the other point in which the bills differed was that their bill would authorize county recorders to perform marriage ceremonies (their bill, Section 70). In response to a question as to why they should be permitted to do so, he replied that it would help solve the problem of marrying judges and often applicants for licenses inquire as to where they can be married and they can only refer them to a wedding chapel. He discussed the situation in the Hall of Records where a woman steers prospective couples to a marrying judge. He said the recorder could perform a simple ceremony with dignity. He stated that two deputies in his office at present are also ministers and able to perform ceremonies at present and could do a good job. He felt that some civil servant should be specified to perform marriages in addition to those now set forth in the law. He said that many judges do not want to perform marriage ceremonies and also that their workload as judges keeps them sufficiently busy.

Mr. Bohn raised the point of the solemnity of marriage and the fact that a ceremony in a judge's chambers or some other area of dignity would help in making this marriage a success. He pointed out that an "over the counter marriage" was similar to buying a "dog license" or something of the sort.

Mr. Lee replied that new quarters are now being provided for the county recorder and facilities will permit applicants to not only apply for licenses privately but that if marriages were to be performed they would also have a private area and be able to perform the ceremony with dignity, more so than is being exhibited on the courthouse steps by marrying judges.

Mr. Lee explained that any fee received or authorized would go to the county fund.

Senator Arnold, who acted as chairman, stated that the subject of marrying judges was being studied by the joint committee at the present time.

Mr. Lee then referred to page 3 of S.B. 2312, third paragraph down where it reads "Nothing in this chapter shall be construed to prevent the performance of a religious marriage ceremony by a priest, etc. as provided in Section 70.5" and asked whether it was not in conflict with Section 68 of the Civil Code.

Mr. Bohn acknowledged that this was probably one of the most controversial sections in this bill and it was anticipated that many might speak in opposition to it. That the purpose of it was to police this operation. That you have the problem where constitutionally it would be very difficult if not impossible for a state or any other governing agency to prohibit a marriage ceremony within a religious organization. Certainly, the state could not control a person's wish to be married within a church whether or not that particular minister is registered. The purpose of this was to distinguish between persons who may wish to have that ceremony by simply stating that it's not going to be valid for civil purposes and the only purposes under which the State of California can act. That is the purpose of that section and regardless of the conflict with Section 68 it would seem that this par-

ticular sentence means what it says so that policywise it is not desirable that it should be taken out of the bill.

The following persons then briefly addressed the committee on questions previously covered herein:

Rev. Louis H. Owens, African Methodist Episcopal Church, Los Angeles.

Col. W. J. Parkins, Salvation Army, Los Angeles.

Rev. R. J. Thurmond, Assemblies of God, Northern California.

Rev. W. L. Martin, A. M. E. Church, Los Angeles.

5. SUBSEQUENT ACTION ON THE PROPOSAL

The following bills were introduced at the 1959 Session on this subject and are fully reported in the Report of the Senate Standing Judiciary Committee, 1959 General Session (Part II of this report):

Senate Bill No. 588, An act to amend Sections 70, 73, and 79 of, and to add Sections 69.5, 70.1, 70.6, 70.7 and 73.5 to, the Civil Code and to amend Section 10350 of the Health and Safety Code, relating to marriage.

Senate Bill 702, An act to add Section 94.5 to the Penal Code, relating to fees and gratuities for performing marriage.

F. MISCELLANEOUS SUBJECTS

1. CIVIL CODE

| <i>Bill number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| A.B. 2209----- | 69 | Am |
| | 82 | Am |
| | 3031 | Am |
| A.B. 1504----- | 3342 | Am |

(a) ASSEMBLY BILL 2209 (1957 Session)

An act to amend Sections 69 and 82 of the Civil Code, relating to marriages of minors.

This bill was introduced and passed at the 1957 Session of the Legislature and is reported in the Fourth Progress Report of the Senate Interim Judiciary Committee (1955-1957) on page 65. It was, however, referred to the 1957 interim committee because suggestions had been made for further amendments in this area.

The subject was thereupon assigned to the Subcommittee on Civil Code, Civil Actions and Civil Procedure for consideration. A hearing was scheduled in September 1958 and interested persons notified to appear. Dr. Nancy J. Cross of Stanford, California, who had expressed interest in the subject, was unable to attend and requested that it be continued for a later hearing. The subcommittee felt, however, that the suggestions for revision were so substantial that a complete study of all the law on marriages would be necessary in order to accomplish a proper result. It was therefore recommended that no further action be taken.

(b)

The following proposal to amend the Civil Code was presented during the interim by the California Bankers Association and had not been previously introduced at the 1957 Session.

An act to amend Section 3031 of the Civil Code:

"If so provided by any written agreement *signed by the borrower*, a lender shall have a continuing lien upon *all merchandise, or upon all merchandise of a designated kind or class, then owned or thereafter acquired by the borrower or upon such merchandise* of the borrower as is from time to time after the execution of said written agreement designated in one or more separate written statements" etc.

The proposal was considered by the Subcommittee on Civil Code and given a favorable recommendation. It was thereafter presented to the full committee and explained as follows by its sponsors.

Proposal to Clarify Inventory Lien Law

Two questions have been raised respecting the Inventory Lien Law adopted in 1957.

Section 3031 of the Civil Code provides that a lender may have an inventory lien if so provided "by any written agreement with the borrower." It is stated some banks believe this writing need be signed by only the borrower, but the section may well contemplate a two-party writing. Amendment either to require both parties to sign or to make clear that only the borrower need sign appears desirable.

A number of comparable laws require only the signature of the borrower or debtor.

A second point is whether the designation of the merchandise in the subsequent statements of the borrower which are to be delivered to the lender may be general or need be specific.

Section 3031, providing for the statements, does not make this clear, though the following section states that the notice of lien need only state the general character of the merchandise.

The sufficiency of the designation is important, of course, not only so as to be definite enough to be binding between the parties but, also, is important as it may affect rights of creditors and rights in bankruptcy.

The committee did not take final action on the proposal at this hearing because no opposition was present and it was felt that additional time should be permitted to determine whether the proposal had merit.

NOTE: During the 1959 Session, Senate Bill 585 was introduced on this subject and is included in the 1959 report of the Standing Judiciary Committee.

SENATE BILL

No. 1504

Introduced by Senator Farr

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 3342 of the Civil Code, relating to the liability of dog owners.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3342 of the Civil Code is amended to
- 2 read:
- 3 3342. The owner of any dog is liable for the damages suf-
- 4 fered by any person who is ~~bitten~~ attacked by the dog while
- 5 in a public place or lawfully in a private place, including the
- 6 property of the owner of the dog, regardless of the former
- 7 viciousness of the dog or the owner's knowledge of such
- 8 viciousness. A person is lawfully upon the private property
- 9 of such owner within the meaning of this section when he is
- 10 on such property in the performance of any duty imposed
- 11 upon him by the laws of this State or by the laws or postal
- 12 regulations of the United States.

This proposal sets forth the liability of dog owners for damages suffered by any person who is attacked by the dog, or suffers serious physical injuries by reason of such attack ("attack" without "bite") by the dog while in a public place or lawfully in a private place, regardless of former viciousness of the dog or owner's knowledge.

The bill was considered by the Subcommittee on Criminal Law and Procedure in March 1958, and it was determined that committee counsel communicate with the author of the bill as to whether amendments should not be made in view of technical difficulties in phrasing the offense so as to include injury but to exclude "romping" and accidental injuries incident thereto.

At a meeting of the full committee on September 5, 1958, Senator Farr, author of the bill, acknowledged the difficulty of phrasing a bill to eliminate the above technicalities and accepted the recommendation that no further action be taken on this bill.

NOTE: During the 1959 Session another bill on this subject was introduced as Senate Bill 129 (An act to amend Section 3341 of the Civil Code, relating to injuries by dogs) and is included in the 1959 report of the Standing Judiciary Committee.

2. CODE OF CIVIL PROCEDURE

| <i>Bill number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| S.B. 141----- | 388.5 | Ad |
| | 1295 to | |
| A.B. 988----- | 1295.22 incl. | Ad |
| | 682.1 | Am |
| | 682.2 | Am |
| A.B. 1679----- | 1998 | Ad |
| | 1998.1 | Ad |
| | 1998.2 | Ad |
| | 1998.3 | Ad |
| | 1998.4 | Ad |

SENATE BILL

No. 141

Introduced by Senator ReganJanuary 9, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 338.5 to the Code of Civil Procedure, relating to causes of action.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 338.5 is added to the Code of Civil
2 Procedure, to read:
3 338.5. No action for the recovery of timber taken by a
4 trespasser, either intentionally or unintentionally, or for the
5 damages resulting from such taking of timber can be sus-
6 tained against any purchaser of such timber where it appears
7 that the purchaser purchased such timber in good faith, for
8 value, and without any notice of the defect in his seller's title.
9 This section shall only apply where the purchaser has made a
10 reasonable effort to ascertain his seller's title.

The subject of this bill was only briefly considered by the interim committee because it was determined that the author of the bill did not wish to continue the matter.

b. ASSEMBLY BILL 988 (1957 Session)

An act to add Section 1294 to the Code of Civil Procedure and to add Title 9.5, comprising Sections 1295 to 1295.22, inclusive, to Part 3 of said code, relating to arbitration of controversies.

Prior to scheduling any hearings on this subject it was learned that the Law Revision Commission was conducting a study related to the same general subject and the committee therefore recommended that no action be taken pending completion of the commission's study. The commission advised that they would furnish the committee with copies of their study.

c. WRIT OF EXECUTION

During the 1957 interim proposed changes to Sections 682.1 and 682.2 of the Code of Civil Procedure, relating to writs of execution, were presented to the committee by the Hon. Roy A. Gustafson, District Attorney of Ventura County.

The subject was considered by the Subcommittee on Civil Code, Civil Actions and Civil Procedure at its hearing on October 7, 1958. The proposed changes were suggested to eliminate confusion and are set forth as follows:

682.1. A writ of execution issued on a judgment for the recovery of money must be substantially in the following form:

(Title of Court)

(Number and abbreviated title of action)

THE PEOPLE OF THE STATE OF CALIFORNIA:

To the Sheriff, Constable or Marshal of the -----
County of ----- Greeting:

WHEREAS on-----a judgment was rendered
by the above entitled court in the above entitled action in
*favor of-----as judgment creditor and
*against-----as judgment debtor
and said judgment was duly entered in (referring to where
entered) for

** \$ principal,
** \$ attorney fees,
** \$ interest, and
** \$-----costs, making a total amount of
** \$ the judgment as entered, and

WHEREAS, according to an affidavit and/or a memo-
randum of costs after judgment filed herein, it appears
that further sums have accrued since the entry of judg-
ment, to wit:

** \$ accrued interest, and
** \$-----accrued costs, making a total of
** \$ due on said judgment before
deductions;

on which total amount credit must be given for payments
and partial satisfactions in the amount of

** \$-----leaving a net balance of
\$ actually due on said judgment on
the date of the issuance of this execution, of which \$-----
is due on principal and/or attorney's fees and
** \$-----as accrued costs and accrued
interest.

Credit must be given for payments and partial satisfactions
in the amount of

\$-----
which is to be first credited against the total of accrued
costs and accrued interest, with any excess credited against
the judgment as entered, leaving a net balance of

** \$-----
actually due on the date of the issuance of this writ of
which

** \$-----
is due on the judgment as entered and bears interest at
7 percent per annum from the date of issuance of this

writ, to which must be added the commissions and costs of the officer executing this writ.

Notice by mail of any sale under the writ of execution (has) (has not) been requested. The following named persons have requested such notice of sale:

Names

Addresses

THESE PRESENTS ARE THEREFORE TO COM-MAND YOU to satisfy the said judgment with interest and costs as provided by law and your costs and disbursements out of the personal property of said debtor, except that one-half of the earnings of the judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of execution pursuant to this writ shall be exempt from such levy, and if sufficient personal property can not be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter, and make return of this writ within not less than 10 days nor more than 60 days after your receipt thereof, with what you have done endorsed hereon.

Given under my hand (and the seal of-----) on-----
19----

Note to Printer: Where the asterisk (*) appears in the foregoing form, it is intended that the printed form shall have the same arrangement and number of words in the line.

Where the double asterisk (**) appears in the foregoing form, it is intended that the dollar sign characters (\$) shall appear under one another in vertical column.

682.2. Whenever a writ of execution is issued, the clerk, or, if there is no clerk, then the judge of the court, shall enter on the face of the writ the amounts of any costs and interest which have accrued from the date of entry of the judgment to the date of the issuance of the writ. *The amount of interest which has accrued from the date of entry of the judgment to the date of issuance of the writ of execution shall be entered on the face of the writ in a like manner to costs if the judgment creditor has filed an affidavit as to the amount of such interest at the time of the request for the issuance of the writ.*

If a judgment creditor claims interest accruing after judgment not included in the judgment pursuant to Section 1033, he must include the amount of such interest in an affidavit to be filed at the time of the request for issuance of the writ of execution.

Interest, on the amount of the judgment remaining unpaid as shown on the writ, from the date of issuance of the writ to the date of execution, shall be computed by the levy-officer and this amount plus the commissions and costs of the levying officer shall be added to the net balance actually due on the date of the issuance of the writ, as stated therein, in determining the total amount to be satisfied by execution.

Mr. Gustafson stated that this section of the code was revised in 1957 and that Senator Dolwig's original bill was later amended in the Assembly during the last moments of the session and some of the language would cause confusion.

The purpose of one amendment was to catch a situation where you had a writ of execution issued on a particular day in an amount which was the amount of the judgment as entered, plus accrued interest, plus accrued costs, less what had been paid to that time, plus interest from the time of the issuance of the writ to the time of the levy, which in some instances might be several weeks and in a large judgment might amount to a lot of money. The clause that was inserted limited the interest to (682.1 "of which \$_____ is due on principal and/or attorney's fees, etc.'). Therefore, measure as it now stands limits the interest from the date of issuance of the writ of execution to the time of collection on that portion of the judgment which is composed of the principal and attorney's fees. The Constitution and all cases interpreting it have indicated that interest runs on the entire amount of the judgment as entered. The judgment might consist of the principal, interest on a note up to the time of judgment, attorney's fees and costs, and that entire amount supersedes everything. Everything is merged in the judgment and the judgment bears interest at 7 percent. That is compounding interest in a sense insofar as interest is included in the judgment, but that is the law and has been the law.

This phrase now restricts the levying officer in the amount of interest he is to collect from the time of the issuance of the execution to the time of the levy, but also it gives rise to the possibility that someone may claim that interest is not collectible on any portion of the judgment as entered from the time it's entered; any portion of that judgment which was originally interest.

The amendment simply tries to make it clear that after you do all of this arithmetic and come down to the amount actually due on the judgment at the time of the issuance of the writ, which includes accrued interest and accrued costs up to that day, then that amount which is represented by the judgment as entered, the entire amount of the judgment as entered bears interest at 7 percent per annum from date of issuance of the writ. That is the only amendment to 682.1.

Mr. Gustafson stated that the purpose of the proposed change in Section 682.2 was to make it clear that Section 682.1 means what he had just explained it means. First, by deleting the entire second paragraph of Section 682.2, which language is ambiguous in that it can be interpreted to mean that a judgment creditor is not entitled to any interest accruing after judgment unless he files such an affidavit. If this were true, the judgment creditor would be compelled to compute the entire amount of interest on the judgment to which he would be entitled. This would include interest accruing both before and after the issuance of the writ. Since the judgment creditor has no way of knowing the exact date on which execution will take place, this would be an impossible feat. An affidavit ordinarily relates to past events within the affiant's knowledge, and since the section provides that this affidavit is

to be filed when the judgment creditor requests that the writ of execution be issued, it can be assumed that the Legislature intended that such an affidavit apply only to interest accruing prior to the issuance of the writ.

Second, the proposed amendment will eliminate these ambiguities, by striking out in its entirety the second paragraph of Section 682.2 and by adding words which would clearly indicate that the affidavit is necessary only as to a claim of interest accruing after the entry of judgment but prior to the issuance of the writ of execution.

Another paragraph is added which emphasizes the fact that interest subsequent to the issuance of the writ, but prior to the date of execution, is to be computed and collected by the levying officer. This would be automatic and would not depend upon the filing of an affidavit by the judgment creditor. Without such a provision there would be no express mandate directing the levying officer to collect this additional sum.

In summary, the proposed amendments to C.C.P. 682.1 and 682.2 would clarify the methods by which a money judgment is enforced by expressly providing that:

(1) All interest following a judgment is to be calculated upon the unpaid balance of the judgment.

(2) Part payments by the judgment debtor are to be first credited against accrued interest and costs.

(3) A judgment creditor must file an affidavit in order to claim interest which has accrued after entry of the judgment but prior to issuance of the writ of execution.

(4) Interest on the judgment which accrues after the issuance of the writ is to be computed by the levying officer and added to the amount which was due at the time the writ was issued.

SUBCOMMITTEE ACTION: That the proposed changes be adopted and such recommendation made to the full committee.

The full committee later adopted the recommendation of the subcommittee, and during the 1959 Session Senate Bill 275, relating to the subject, was introduced and is included in the 1959 Report of the Standing Judiciary Committee (Part II of this report).

d. SUBPOENA OF HOSPITAL RECORDS—A.B. 1679 (1957 SESSION)**I. Introduction**

The bill as referred to the interim committee following the 1957 Session read as follows:

AMENDED IN SENATE JUNE 4, 1957

AMENDED IN ASSEMBLY MAY 20, 1957

AMENDED IN ASSEMBLY MAY 17, 1957

AMENDED IN ASSEMBLY MAY 10, 1957

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL

No. 1679

Introduced by Mr. Hanna

January 18, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Sections 1998, 1998.1, 1998.2, 1998.3, and 1998.4 to the Code of Civil Procedure, relating to subpoena of hospital records.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1998 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1998. (a) When a subpoena duces tecum is served upon the
- 4 custodian of records or other qualified witness from a licensed
- 5 or county hospital in an action or special proceeding in which
- 6 the hospital is not a party and such subpoena requires the pro-
- 7 duction of all or any part of the records of the hospital relating
- 8 to the care or treatment of a patient in such hospital, *unless*
- 9 *the affidavit for the issuance of the subpoena shall designate*
- 10 *"the original records only,"* it shall be sufficient compliance
- 11 therewith if the custodian or other officer of the hospital shall,
- 12 within five days, or such lesser times as shall be allowed by
- 13 the subpoena or by order of court, after the receipt of such
- 14 subpoena, deliver by mail or otherwise a true and correct copy
- 15 made by photographic or other similar reproducing process
- 16 of all the records described in such subpoena to the clerk of
- 17 court or other person as provided herein, together with the
- 18 affidavit described in Section 1998.1.

1 (b) The records shall be separately enclosed in an inner
2 envelope or wrapper, sealed, with the title and number of the
3 action or proceeding, name of witness and date of subpoena
4 clearly inscribed thereon; the sealed envelope or wrapper shall
5 then be enclosed in an outer envelope or wrapper, sealed,
6 directed as follows: If the subpoena directs attendance in court,
7 to the clerk of such court, or the judge thereof, if there be
8 no clerk; if the subpoena directs attendance at a deposition or
9 other hearing, to the officer before whom the deposition is to
10 be taken, at the place designated in the subpoena for the taking
11 of the deposition or at his place of business; in other cases, to
12 the officer, body or tribunal conducting the hearing, at a like
13 address.

14 (c) Unless the parties to the action or proceeding otherwise
15 agree, or unless the sealed envelope or wrapper is returned to
16 a witness who is to appear personally, the records shall remain
17 sealed and shall be opened only at the time of trial, deposition
18 or other hearing, upon the direction of the judge, officer, body
19 or tribunal conducting the proceeding, in the presence of all
20 parties who have appeared in person or by counsel at such
21 trial, deposition or hearing; provided, nothing herein shall
22 limit the power of the court for good cause, to order inspection
23 and the taking of copies in a proceeding pending in court,
24 after notice to adverse parties. Records which are not intro-
25 duced in evidence or required as part of the record shall be
26 returned to the person or entity from whom received.

27 SEC. 2. Section 1998.1 is added to the Code of Civil Pro-
28 cedure, to read:

29 1998.1. The records referred to in Section 1998 shall be
30 accompanied by the affidavit of the custodian or other quali-
31 fied witness, stating each of the following: (a) that the copy
32 is a true copy of all the records described in the subpoena,
33 (b) that the records were prepared by the personnel of the
34 hospital, staff physicians, or persons acting under the control
35 of either, in the ordinary course of hospital business at or near
36 the time of the act, condition or event. If the hospital has none
37 of the records described, or only part thereof, the custodian
38 shall so state in the affidavit, and deliver the affidavit in the
39 manner provided in Section 1998.

40 SEC. 3. Section 1998.2 is added to the Code of Civil Pro-
41 cedure, to read:

42 1998.2. The copy of the records referred to in Section 1998
43 shall be admissible in evidence to the same extent as though
44 the original thereof were offered and the custodian had been
45 present and testified to the matters stated in the affidavit. The
46 affidavit shall be admissible in evidence and the matters stated
47 therein shall be presumed true in the absence of evidence to
48 the contrary. When more than one person has knowledge of the
49 facts, more than one affidavit may be made.

1 SEC. 4. Section 1998.3 is added to the Code of Civil Pro-
2 cedure, to read:

3 1998.3. The personal attendance of the custodian or other
4 qualified witness shall be required in cases mentioned in Sec-
5 tion 1998 if a subpoena without a duces tecum clause is then or
6 later served upon the witness at the instance of any party.

7 SEC. 5. Section 1998.4 is added to the Code of Civil Pro-
8 cedure, to read:

9 1998.4. A subpoena duces tecum for the original records
10 referred to in Section 1998 may be issued after the issuance
11 of the original subpoena duces tecum if ~~the attorney~~ *an attorney*
12 of record files with the clerk an affidavit stating that he has
13 examined the copy submitted and that it is insufficient for use
14 in the action or special proceedings, with a statement of the
15 reasons why the copy is insufficient. The custodian of records
16 or other qualified witness upon which such a subpoena duces
17 tecum is served, shall respond to it in the same manner as
18 provided in Section ~~1998~~ 1985.

The subject was briefly considered by the Subcommittee on Civil Code, Civil Actions and Civil Procedure at a meeting in Sacramento on April 9, 1958, and it was determined that a hearing be scheduled and notice sent to all interested groups.

A hearing on the bill was scheduled on October 7, 1958, and notices were sent to all groups having an interest in the proposal.

The California Hospital Association, represented by Musick, Peeler & Garrett, advised that it would send a representative to the meeting.

Counsel for the California Medical Association, Mr. Howard Hassard, advised the committee by letter that "It seems to me that the new discovery rules adopted in 1957 (S.B. 1093—Code of Civil Procedure Secs. 2106 et seq.) largely eliminate any necessity for legislation of the type intended by A.B. 1679. The new discovery rules permit counsel on either side to require production of documents before trial, and also permit either party to obtain documentary information through interrogatories and requests for admissions of fact. I believe that in any further study of A.B. 1679 it would be most desirable to evaluate the subject matter in the light of our present procedural rules governing court actions."

In an effort to resolve differences prior to the hearing, committee counsel advised Mr. James E. Ludlam, counsel for the California Hospital Association, of Mr. Hassard's suggestions. Mr. Ludlam's response is set forth as follows:

621 SOUTH HOPE STREET, LOS ANGELES 17
September 23, 1958

MR. JOHN A. BOHN
640 First Street
Benicia, California

DEAR JOHN: This is in answer to your letter of August 19, 1958, concerning the A.B. 1679 (1957) session. In your letter you enclosed a letter dated August 4, 1958, from Mr. Howard Hassard indicating that it was his belief that the problems which A.B. 1679 sought to solve had been resolved by the changes in the discovery procedure.

Unfortunately, the discovery procedure solves everybody's problems but that of the hospital. Our record librarians are still being subjected to a large volume of subpoenas which take them to all parts of the county. These subpoenas are issued in connection with depositions as well as the final trial. This has put a severe and we believe unnecessary burden upon the hospitals which we believe can be resolved by a procedure such as set forth in A.B. 1679.

I waited to answer your letter until I had an opportunity to discuss this matter with Mr. Hassard direct. We met in Fresno this past week and believe a solution can be worked out. Under these circumstances, we would appreciate it if A.B. 1679 can be kept on the calendar and set for hearing by the Interim Committee prior to the convening of the 1959 session.

I sincerely appreciate your bringing this matter to my attention and will assure you of our continued co-operation in resolving this matter.

Sincerely yours,

JAMES E. LUDLAM

II. Proposal Considered by Subcommittee

The bill was redrafted and considered at the October 7 hearing in the following form:

An act to add Section 1998, 1998.1, 1998.2, 1998.3, 1998.4, and 1998.5 to the Code of Civil Procedure relating to subpoena of hospital records.

The people of the State of California do enact as follows:

SECTION 1. Section 1998 is added to the Code of Civil Procedure, to read:

1998. (a) When a subpoena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital in an action or special proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, within five days after the receipt of such subpoena, deliver by mail or otherwise a true and correct copy (which may be a photographic or microphotographic reproduction) of all the records described in such subpoena to the clerk of court or to the court if there be no clerk or to such other person as described in Section 2018(a) of this code, together with the affidavit described in Section 1998.1.

(b) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action or proceeding, name of witness and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, directed as follows: If the subpoena directs attendance in court, to the clerk of such court, or to the judge thereof, if there be no clerk; if the subpoena directs attendance at a deposition or other hearing, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(c) Unless the parties to the action or proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

SEC. 2. Section 1998.1 is added to the Code of Civil Procedure, to read:

1998.1. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following: (a) that the affiant is the duly authorized custodian of the records and has authority to certify said records, (b) that the copy is a true copy of all the records described in the subpoena, (c) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event. If the hospital

has none of the records described, or only part thereof, the custodian shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Section 1998.

SEC. 3. Section 1998.2 is added to the Code of Civil Procedure to read:

1998.2. The copy of the records shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

SEC. 4. Section 1998.3 is added to the Code of Civil Procedure, to read:

1998.3. The personal attendance of the custodian or other qualified witness shall be required if a subpoena without a duces tecum clause is then or later served upon the witness at the instance of any party.

SEC. 5. Section 1998.4 is added to the Code of Civil Procedure, to read:

1998.4. A subpoena duces tecum for the original records may be issued after the issuance of the original subpoena duces tecum if the attorney of record files with the clerk an affidavit (in addition to the affidavit for subpoena duces tecum) stating that he has examined the copy submitted and that it is insufficient for use in the action or special proceedings, with a statement of the reasons why the copy is insufficient. Said subpoena may provide for compliance therewith at a time which is not less than 24 hours after service thereof.

SEC. 6. Section 1998.5 is added to the Code of Civil Procedure, to read:

1998.5. The original records shall be required to be produced if, at the time the initial subpoena duces tecum is served, there is also served on the custodian or other witness a subpoena without a duces tecum clause. This subsection shall not be interpreted to require tender or payment of more than one witness and mileage fee to the same witness.

Present at this hearing were the following:

Charles F. Forbes, of Musick Peeler & Garrett, Los Angeles, representing the California Hospital Association.

Mr. Louis M. Peelyon, Administrator, Grossmont Hospital, P.O. Box 158, La Mesa.

In explaining the bill, Mr. Forbes pointed out that it authorizes hospitals to mail records for a given patient directly to the clerk of a court or to the person conducting a deposition without the necessity of having the custodian of medical records personally appear.

The association felt that the bill was a fair one for the reason that in most cases attorneys are primarily interested in having the records in court and not the custodian. It was further explained that the custodian in most instances was incapable and incompetent to testify as to the material contained in records and merely was called for the purpose of authenticating documents and laying a proper foundation for their introduction into evidence.

Mr. Forbes stated that counsel for the California Medical Association had suggested the deletion of the words "or special proceeding" throughout the redrafted bill and that his group had no objection to eliminating the language.

One of the objectives of the bill was to relieve hospitals of the increasing costs attributable to having personnel appear in court. Time spent in court appearances was increasing hospital costs to the public and complaints had been made. It was also noted that most medical records librarians were women and scheduling of depositions at odd times was in violation of the State Labor Code.

The subcommittee made the following suggestions for redrafting:

1. That it be explicit in the bill that hospitals bear the expense with regard to supplying of records—that if the hospital chooses to send copies they should not charge for it.

2. Consider the possibility of a special form of subpoena.

3. With reference to Section 1998.3, that discretion should be with the attorney as to whether the attendance of both the custodian and the records would be required.

The subcommittee then recommended that proponents of the measure revise it in the light of the above suggestions prior to its consideration at the next scheduled hearing of the full interim committee.

III. Full Committee Hearings

Assembly Bill 1679 was rescheduled for hearing before the full committee on December 4, 1958, and considered at that time in the following form:

An act to add Section 1998, 1998.1, 1998.2, 1998.3, 1998.4, and 1998.5 to the Code of Civil Procedure relating to subpoena of hospital records.

The people of the State of California do enact as follows:

SECTION 1. Section 1998 is added to the Code of Civil Procedure, to read:

1998. (a) Except as provided in Section 1998.3 when a subpoena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital in an action in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, within five days after the receipt of such subpoena, deliver by mail or otherwise a true and correct copy (which may be a photographic or microphotographic reproduction) of all the records described in such subpoena to the clerk of court or to the court if there be no clerk or to such other person as described in Section 2018(a) of this code, together with the affidavit described in Section 1998.1.

(b) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, directed as follows:

If the subpoena directs attendance in court, to the clerk of such court, or to the judge thereof, if there be no clerk; if the subpoena directs attendance at a deposition or other hearing, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(c) Unless the parties to the action or proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

SEC. 2. Section 1998.1 is added to the Code of Civil Procedure, to read:

1998.1. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following: (a) that the affiant is the duly authorized custodian of the records and has authority to certify said records, (b) that the copy is a true copy of all the records described in the subpoena, (c) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event. If the hospital has none of the records described or only part thereof, the custodian shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Section 1998.

SEC. 3. Section 1998.2 is added to the Code of Civil Procedure, to read:

1998.2. The copy of the records shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and

testified to the matters stated in the affidavit. The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

SEC. 4. Section 1998.3 is added to the Code of Civil Procedure, to read:

1998.3. These subsections shall not be interpreted to require tender or payment of more than one witness and mileage fee or other charge unless there shall be an agreement to the contrary.

SEC. 5. Section 1998.4 is added to the Code of Civil Procedure, to read:

1998.4. The personal attendance of the custodian or other qualified witness and the production of the original records shall be required if the subpoena duces tecum contains a clause which reads:

"The procedure authorized pursuant to Section 1998(a), 1998.1 and 1998.2 will not be deemed sufficient compliance with this subpoena."

Mr. James E. Ludlam, representing the California Hospital Association, testified as follows:

MR. LUDLAM: James E. Ludlam, Attorney, California Hospital Association, office 621 South Hope St., Los Angeles, California. This matter has been heard twice before by the committee and we were asked to prepare two additional changes in what we call the hospital subpoena bill. I have copies here for the committee if you don't have them.

SENATOR GRUNSKY: This is one of those that was heard at the subcommittee meeting in Coronado, is it not?

MR. LUDLAM: That is correct. It was heard the second time at that time and the committee favored the proposal, but felt that there were two changes that should be made to clarify the legislation. The two changes appear on page four, Section 1998.3 under Section 4. "These subsections shall not be interpreted to require tender or payment more than one witness and mileage fee or other charge unless there shall be an agreement to the contrary." Now the committee wanted us to put in those words "or other charge" so there would be no question that the hospital was charging the attorney or the subpoenaing party for the records which were being photostated and submitted to them.

SENATOR GRUNSKY: Now, so we understand it, do you mean the hospital association is proposing this bill as voluntarily offering to assume the cost of photostating in order to avoid the inconvenience of producing witnesses?

MR. LUDLAM: That is correct.

SENATOR GRUNSKY: Well, I think that is a very generous compromise. Alright, go ahead.

MR. LUDLAM: The second change is 1998.4 at the bottom of the page and that was the question as to what language the attorney should put on the subpoena in the event he wanted the original records produced as well as the witness. And 1998.4 would now read, under our proposal, "The personal attendance of the custodian or other qualified witness and the production of the original records shall be required if the subpoena duces tecum contains a clause which reads, 'The procedure authorized pursuant to Section 1998(a), 1998.1 and 1998.2 will not be deemed sufficient compliance with this subpoena.'"

SENATOR GRUNSKY: Senator Dolwig, you were the chairman of the subcommittee on that and I think those of us who heard it were all in agreement with what they are trying to do with these amend-

ments and concessions incorporated by them. I think the hospital association is going to make the attorneys more than happy with the situation. Are you prepared to make a motion that we take action on it and perhaps all that remains is for our counsel to proofread the language and make technical changes, but insofar as the subject matter is concerned, are you prepared to make a motion and recommendations?

SENATOR GRUNSKY: What I would like to have now is a motion that this be taken up in the nature of a consent calendar matter in the Standing Committee along the lines of our motion.

SENATOR DOLWIG: I'll move that the committee take favorable action and recommend the passage of this legislation.

SENATOR GRUNSKY: John, what is the form that we are following now in our report.

MR. BOHN: The substance of the language we are using reads as follows: That the committee has given notice to all interested parties and has thoroughly considered bill number whatever it might be, and does not desire to hear further testimony on the bill at the legislative session, but instead intends to either pass or reject the bill as the case may be.

SENATOR GRUNSKY: Now, has everyone been on notice, Mr. Bohn, that this matter was coming up again for hearing today on our mailing list?

MR. BOHN: Yes, a copy of the full agenda was sent to our complete mailing list and at some earlier stages in the proceedings there was opposition by Mr. Hassard. That has been removed and I understand that he is thoroughly in accord with the bill on behalf of the Medical Association.

SENATOR GRUNSKY: After such notice, is there anyone present today who has any opposition to this proposed legislation? If not, then there is a motion before the committee substantially in the form stated by Mr. Bohn that we approve this bill, all in favor signify by saying "aye." Contrary minded. So ordered. Next matter on the agenda.

MR. LUDLAM: Thank you.

IV. Subsequent Action on Measure

The subject of this bill was introduced at the 1959 Session as Senate Bill 273 and is included in the report of the Standing Judiciary Committee (Part II of this report).

3. CONSTITUTION

| <i>Bill number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|-----------------|---------------|
| S.C.A. 46----- | Art. I, Sec. 26 | Ad |

S.C.A. 46

This bill proposed to add Section 26 to Article I of the State Constitution. More specifically, it provided certain proceedings for persons about to be committed to mental institutions.

The Subcommittee on Civil Code, Civil Actions and Civil Procedure considered the subject at a meeting in May, 1958 and determined that an opinion be obtained from Legislative Counsel before scheduling further hearings.

That opinion is set forth as follows:

SACRAMENTO, CALIFORNIA
August 26, 1958

HONORABLE DONALD L. GRUNSKY
Lettunich Building
Watsonville, California

Bill of Rights for Mental Freedom—No. 3822

DEAR SENATOR GRUNSKY:

Question

You have asked whether the provision of Senate Constitutional Amendment No. 46 of the 1957 Regular Session could be covered by statute rather than by a constitutional amendment.

Opinion

In our opinion the answer to your question is in the affirmative.

Analysis

Senate Constitutional Amendment No. 46 of the 1957 Regular Session would have added Section 26 to Article 1 of the California Constitution, to read as follows:

"Sec. 26. This section shall be known and may be cited as the 'Bill of Rights for Mental Freedom.'

"(a) No person shall be committed to or confined in a mental institution without a court hearing.

"(b) No person shall be committed to or confined in a mental institution unless he is afforded the right to a speedy public trial; to a trial by jury; to counsel of his own choosing, or if unable to obtain counsel, to a counsel appointed by the court; to be confronted by his accusers; to ample notice of the exact charges against him; and to compulsory process for the attendance of witnesses.

"(c) It shall be the duty of the public defender, if appointed, to defend persons accused of being mentally ill or mentally deficient, and it shall be the duty of the court to appoint counsel for any such person, if that person is unable to obtain counsel of his own choosing.

"(d) No person shall be committed to or confined in a mental institution because of his religious or political beliefs.

"(e) No person shall be committed to or confined in a mental institution to prevent him from exercising his right of freedom of speech, including his right to express his political views and to criticize the government, any public official or any law.

"(f) No person shall be committed to or confined in a mental institution to prevent him from exercising his right to assemble with his fellow citizens; to petition the government for the redress of his grievances; to lawfully possess arms; to resist unlawful searches and seizures; to engage in political activity; to resist the taking of his property; or to take appropriate action in defense of his children, parents, or spouse.

"(g) Persons accused of being mentally ill or mentally deficient shall not prior to adjudication of mental illness or deficiency be confined with and among persons previously adjudged mentally ill or mentally deficient except when no other facilities are available.

"(h) Patients in a mental institution shall not be denied the right to counsel, or the right to communicate with persons outside the institution.

"(i) No United States citizen shall be transported out of this State on charges of mental illness or mental deficiency of any kind unless it be to the state of his legal residence.

"Enumeration of the foregoing rights shall not deprive a person accused of mental illness or mental deficiency of any other rights that he may have at law or in equity."

If adopted, this amendment would have guaranteed certain rights to persons accused of being mentally ill or mentally deficient, most of which rights are presently provided for either in the California Constitution (e.g., Art. 1, Secs. 4, 9, 10, and 13) or the Welfare and Institutions Code (Secs. 5000 to 5264).

In our opinion there is no doubt but that all of the rights guaranteed by the proposed constitutional amendment could be provided for by statutory enactment. We

are aware of no restriction upon the power of the Legislature to provide such guarantees.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By RAY H. WHITAKER
Deputy Legislative Counsel

Following consideration of the foregoing opinion the subcommittee concluded that the bill would provide certain rights to mentally ill persons, most of which are presently provided for either in the California Constitution (Art. 1, Sections 4, 9, 10 and 13) or the Welfare and Institutions Code (Section 5000 to 5264).

It was also determined that the matter required more thorough study than could be accomplished during this interim and since no group had requested a hearing no further hearings were scheduled.

NOTE: The subject of this bill was again introduced during the 1959 Session as S.C.A. 3 and a hearing held thereon following the session. The history is included in the 1959 Report of the Standing Judiciary Committee and will later be incorporated in the report of the 1959 Interim Judiciary Committee.

4. INSURANCE CODE

| <i>Bill Number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|---------------------------------------|---------------|
| A.B. 3468 ----- | Art. 6.5 to Ch. 1, Pt 2, Div. 1 | Ad |

ASSEMBLY BILL 3468 (1957 Session)

An act to add Article 6.5 to Chapter 1, Part 2, Division 1 of the Insurance Code, relating to insurance.

This proposal was initially a bill to regulate unfair practices in the insurance trade, according to the intent of Public Law 15, 79th Congress, but in its final amendment regulates "advertising" in the trade and takes the form of a resolution.

The Subcommittee on Civil Code, Civil Actions and Civil Procedure determined that further hearings not be scheduled until committee counsel could discuss the bill with its author to learn the intent of the proposal.

No further action was taken by the Committee because the author of the proposal did not respond to committee counsel's inquiry.

5. PENAL CODE

| <i>Bill Number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| S.B. 1806 | 189 | Re |
| | 190 | Am |
| S.B. 2649 | 290 | Am |
| S.B. 1803 | 647 | Am |
| A.B. 2577 | 837.5 | Ad |
| S.B. 1799 | 1111 | Re |
| | 1111 | Ad |
| | 1111A | Ad |
| S.B. 1674 | 1203.005 | Ad |
| A.B. 986 | 1510 to 1521 | Ad |
| (companion bills) | | |
| S.B. 816 | 1510 to 1521 | Ad |
| S.B. 1285 | 4532 | Am |

a.

AMENDED IN SENATE APRIL 24, 1957

SENATE BILL

No. 1806

Introduced by Senator Farr

January 23, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 190 and to repeal Section 189 of the Penal Code, relating to the degrees of, and punishment for, murder.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 189 of the Penal Code is repealed.
- 2 SEC. 2. Section 190 of said code is amended to read:
- 3 190. ~~Every person guilty of murder in the first degree~~
- 4 ~~shall suffer~~ All murder which is perpetrated by means of
- 5 poison, or lying-in-wait, or torture, or which is committed
- 6 in the perpetration of, or attempt to perpetrate, arson, rape,
- 7 robbery, burglary, mayhem, or any act punishable under Sec-
- 8 tion 288, or which is committed in the course or for the purpose
- 9 of resisting or avoiding or preventing a lawful arrest, or of
- 10 effecting or assisting an escape or rescue from legal custody,
- 11 or which is committed against a prison officer acting in the
- 12 execution of his duty or of a person assisting a prison officer so
- 13 acting by a person who was a prisoner when he committed the
- 14 murder, or which is committed against a peace officer acting in
- 15 the execution of his duty or of a person assisting a peace officer
- 16 so acting, shall be punishable by death, or confinement in the
- 17 state prison for life, at the discretion of the jury trying
- 18 the same; or, upon the plea of guilty, the court shall deter-
- 19 mine the same; and ~~every person guilty of murder in the~~
- 20 ~~second degree punishment; all other murder shall be~~ is punish-
- 21 able by imprisonment in the state prison from five years to
- 22 life; ~~provided, that this section is to apply to all persons now~~
- 23 ~~serving sentence in a state prison for murder of the second~~
- 24 ~~degree and the sentence of such persons may be modified or~~
- 25 ~~reduced to conform to this section; provided, that the death~~

1 penalty shall not be imposed or inflicted upon any person for
2 murder committed before such person shall have reached the
3 age of 18 years; and provided, that the burden of proof as
4 to the age of said person shall be upon the defendant.

5 *The word "prison" as used in this section means all institu-*
6 *tions and prison facilities over which the Department of Cor-*
7 *rections has jurisdiction and all facilities over which the*
8 *Department of the Youth Authority has jurisdiction.*

9 *The word "prison officer" as used in this section means any*
10 *member of the staff of the Department of Corrections or the*
11 *Department of the Youth Authority.*

12 *The word "prisoner" as used in this section means any*
13 *person who is undergoing imprisonment or detention in a*
14 *prison, whether under sentence or not, or who, while liable to*
15 *imprisonment or detention in the prison, is unlawfully at large.*

This bill is a proposal to amend Section 190 and to repeal Section 189 of the Penal Code, relating to the degrees of, and punishment for murder.

The proposal was considered briefly by the Subcommittee on Criminal Law and Procedure and it was felt that the bill presented certain technical difficulties and that there should be no further action or hearing on the matter at this time.

b.

SENATE BILL

No. 2649

Introduced by Senators Farr and Short

January 25, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 290 of the Penal Code, relating to registration of sex offenders.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 290 of the Penal Code is amended to
2 read:
3 290. Any person who, since the first day of July, 1944,
4 has been or is hereafter convicted in the State of California
5 of the offense of assault with intent to commit rape or the in-
6 famous crime against nature, under Section 220, or of any
7 offense defined in Sections 266, 267, 268, 285, 286, 288, 288a,
8 subdivision 1 of Section 647a, subdivision 3 or 4 of Section
9 261, subdivision 5 of Section 647, or subdivision 1 or 2 of
10 Section 311 of this code, or of any offense involving lewd and
11 lascivious conduct under Section 702 of the Welfare and
12 Institutions Code; or any person who since said date has been
13 or is hereafter convicted of the attempt to commit any of the
14 above-mentioned offenses; or any person who since said date
15 or at any time hereafter is discharged or paroled from a penal
16 institution where he was confined because of the commission
17 or attempt to commit one of the above-mentioned offenses; or
18 any person who since said date or at any time hereafter is
19 determined to be a sexual psychopath under the provisions of
20 Chapter 4 of Part 1 of Division 6 of the Welfare and Institu-
21 tions Code; or any person who has been since said date or is
22 hereafter convicted in any other state of any offense which, if
23 committed or attempted in this State, would have been punish-
24 able as one or more of the above-mentioned offenses shall within
25 30 days after the effective date of this section or within 30
26 days of his coming into any ~~county or city or county~~, or city
27 and county in which he resides or is temporarily domiciled for
28 such length of time register with the chief of police of the city

1 in which he resides or the sheriff of the county if he resides
2 in an unincorporated area.

3 Any person who, after the first day of August, 1950, is dis-
4 charged or paroled from a jail, prison, school, road camp, or
5 other institution where he was confined because of the com-
6 mission or attempt to commit one of the above-mentioned
7 offenses or is released from a state hospital to which he was
8 committed as a sexual psychopath under the provisions of
9 Chapter 4 of Part 1 of Division 6 of the Welfare and Institu-
10 tions Code shall, prior to such discharge, parole, or release, be
11 informed of his duty to register under this section by the
12 official in charge of the place of confinement or hospital and
13 the official shall require the person to read and sign such
14 form as may be required by the State Bureau of Criminal
15 Identification and Investigation, stating that the duty of the
16 person to register under this section has been explained to
17 him. The official in charge of the place of confinement or
18 hospital shall obtain the address where the person expects to
19 reside upon his discharge, parole, or release and shall report
20 such address to the State Bureau of Criminal Identification
21 and Investigation. The official in charge of the place of con-
22 finement or hospital shall give one copy of the form to the
23 person, and shall send two copies to the State Bureau of
24 Criminal Identification and Investigation, which bureau, in
25 turn, shall forward one copy to the appropriate law enforce-
26 ment agency having local jurisdiction where the person expects
27 to reside upon his discharge, parole, or release.

28 Any person who after the first day of August, 1950, is
29 convicted in the State of California of the commission or
30 attempt to commit any of the above-mentioned offenses and
31 who is released on probation or discharged upon payment of
32 a fine shall, prior to such release or discharge, be informed of
33 his duty to register under this section by the court in which
34 he has been convicted and the court shall require the person
35 to read and sign such form as may be required by the State
36 Bureau of Criminal Identification and Investigation, stating
37 that the duty of the person to register under this section has
38 been explained to him. The court shall obtain the address
39 where the person expects to reside upon his release or dis-
40 charge and shall report within three days such address to the
41 State Bureau of Criminal Identification and Investigation.
42 The court shall give one copy of the form to the person, and
43 shall send two copies to the State Bureau of Criminal Identi-
44 fication and Investigation, which bureau, in turn, shall for-
45 ward one copy to the appropriate law enforcement agency
46 having local jurisdiction where the person expects to reside
47 upon his discharge, parole, or release.

48 Such registration shall consist of (a) a statement in writ-
49 ing signed by such person, giving such information as may be
50 required by the State Bureau of Criminal Identification, and

- 1 (b) the fingerprints and photograph of such person. Within
2 three days thereafter the registering law enforcement agency
3 shall forward such statement, fingerprints and photograph to
4 the State Bureau of Criminal Identification and Investigation.
5 If any person required to register hereunder changes his
6 residence address he shall inform, in writing within 10 days,
7 the law enforcement agency with whom he last registered of
8 his new address. The law enforcement agency shall, within
9 three days after receipt of such information, forward it to the
10 State Bureau of Criminal Identification and Investigation.
11 The State Bureau of Criminal Identification and Investiga-
12 tion shall forward appropriate registration data to the law
13 enforcement agency having local jurisdiction of the new place
14 of residence.
15 Any person required to register under the provisions of
16 this section who shall violate any of the provisions thereof is
17 guilty of a misdemeanor.
18 The statements, photographs and fingerprints herein re-
19 quired shall not be open to inspection by the public or by any
20 person other than a regularly employed peace or other law
21 enforcement officer.

This bill proposes to amend Section 290 of the Penal Code, relating to registration of sex offenders.

The subject was considered by the Subcommittee on Criminal Law and Procedure in March 1958. It was noted during the discussion that present sex registration laws may be defective in several respects and further hearings should be scheduled. It was also pointed out that a recent Attorney General's opinion would require registration as a sex offender of a person showing obscene pictures to minors and further that the possibility exists that many persons charged with various offenses plead guilty to misdemeanor offenses within the sex registration statute without realizing that registration was automatic upon a conviction of this offense.

Committee counsel noted further that while probation and parole are available on criminal offenses, no machinery exists for a person who may have been rehabilitated to be released from the requirement of registration, and it is deemed desirable that a study be made as to means by which a certificate of rehabilitation could be issued and a procedure established relieving the person so certified to be cured from the requirement of further registration under the sex registration statutes. In this connection he referred to Penal Code 1203.4, which has been held not to include relief from registration.

The full committee made no recommendation on this subject because no further hearings were held.

SENATE BILL

No. 1803

Introduced by Senator Farr

January 23, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 647 of the Penal Code, relating to vagrants.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:

3 647. 1. Every person (except a California Indian) without
4 visible means of living who has the physical ability to work,
5 and who does not seek employment, nor labor when employ-
6 ment is offered him; or,

7 2. Every beggar who solicits alms as a business, or,

8 3. Every person who roams about from place to place with-
9 out any lawful business; or,

10 4. Every person known to be a pickpocket, thief, burglar
11 or confidence operator, either by his own confession, or by his
12 having been convicted of any of such offenses, and having no
13 visible or lawful means of support, when found loitering
14 around any steamboat landing, railroad depot, banking in-
15 stitution, broker's office, place of amusement, auction room,
16 store, shop or crowded thoroughfare, car, or omnibus, or any
17 public gathering or assembly; or,

18 5. Every lewd or dissolute person, or every person who
19 loiters in or about public toilets in public parks; or,

20 6. Every person who wanders about the streets at late or
21 unusual hours of the night, without any visible or lawful
22 business; or,

23 7. Every person who lodges in any barn, shed, shop, out-
24 house, vessel, or place other than such as is kept for lodging
25 purposes, without the permission of the owner or party en-
26 titled to the possession thereof; or,

27 8. Every person who lives in and about houses of ill fame; or,

28 9. Every person who acts as a runner or capper for attor-
29 neys in and about police courts or city prisons; or,

- 1 10. Every ~~common~~ prostitute; or,
- 2 11. Every ~~common drunkard~~ *person habitually engaged in*
- 3 *the excessive use of alcoholic beverages* ; or,
- 4 12. Every person who loiters, prowls or wanders upon the
- 5 private property of another, in the nighttime, without visible
- 6 or lawful business with the owner or occupant thereof; or
- 7 who while loitering, prowling or wandering upon the private
- 8 property of another, in the nighttime, peeks in the door or
- 9 window of any building or structure located thereon and
- 10 which is inhabited by human beings, without visible or lawful
- 11 business with the owner or occupant thereof;
- 12 Is a vagrant, and is punishable by a fine of not exceeding
- 13 five hundred dollars (\$500), or by imprisonment in the county
- 14 jail not exceeding six months, or by both such fine and im-
- 15 prisonment.

This bill proposes to amend Section 647 of the Penal Code, relating to vagrants. It was considered by the Subcommittee on Criminal Law and Procedure in March 1958, and determined that the proposed new language changing "common drunkard" to a "person habitually engaged in the excessive use of alcoholic beverages" would open up an entire new field not contemplated by a vagrancy statute, but which is now controlled under the alcoholism statutes in the Welfare and Institutions Code. The amendment would confuse alcoholism with the vagrant type drunk, and it was recommended that such amendment not be adopted. No further hearings were scheduled and the committee made no recommendations for amendment in view of difficulties anticipated in proper phraseology.

NOTE: During the 1959 Session Assembly Bill 2712 was introduced on this subject and is included in the 1959 Report of the Standing Judiciary Committee.

d. ASSEMBLY BILL 2577 (1957 Session)

An act to add Section 837.5 to the Penal Code, relating to arrest.

This bill proposed that a peace officer, a retail merchant, or such merchant's employee, servant or agent who has probable cause for belief that goods has been stolen from the establishment during business hours and can be recovered, may take the suspected person into custody for purposes of investigation and to effect recovery. This detention may take place in the establishment or immediate vicinity. The peace officer, etc., is not subject to liability for false arrest, false imprisonment, or unlawful detention. (This bill was given a "do pass as amended" recommendation by the Senate Committee on Judiciary. It was referred to the Senate Committee on Rules by the Senate.) The Rules Committee later referred the bill to the Senate Interim Committee for further consideration.

The bill was heard by the Subcommittee on Criminal Law and Procedure in March 1958, at which time it was learned that proponents of the measure were attempting to rewrite it so as to eliminate some of

the opposition. Senator Farr reported that Mr. Adrian Kragen, counsel for the proponents, was temporarily out of the country and the matter would have to be scheduled later in the year. Senator Grunsky requested that it be included on the agenda of the December hearing if at all possible.

At the December 1958 hearing of the Full Committee the subject was again considered. Appearing before the committee on behalf of proponents was Mr. Ray Wickland, Stores Protective Association of Los Angeles and Mr. Adrian Kragen, counsel for the Association. The testimony is reported as follows:

MR. WICKLAND: Donald E. Wickland. I am the general manager of the Stores Detective Association, Incorporated, of Los Angeles.

SENATOR GRUNSKY: Yes, we do have something to refer to while we're going through this. Alright, just so we knew it was here. Are we ready to proceed, sir?

MR. WICKLAND: To further explain the position of the Stores Protective Association, it has been in existence approximately 35 years and is owned and operated by the major department stores. We only handle criminal matters concerning bad checks, fraud charges, dishonest employees, refund artists, miscellaneous investigations, inventory shrinkage and shoplifting. It is the shoplifting element that I wish to discuss very, very briefly here today on a very approximate basis. I qualify my statements by the use of the word "approximate" because as we all know no one can give an exact figure because of the unknown quantity.

Recognizing that you gentlemen would want this material as correct as humanly possible I called a meeting yesterday in my office in the Subway Terminal Building of the following top security directors for the five largest department stores in this area. Contacted were: Phillips, Mr. Lou Hawthorne; May Company, Mr. Fred MacIntyre; J. W. Robinson's, Mr. Harvey Smith; Broadway Department Stores, Incorporated, Mr. Bascom Shanks; and Sears Roebuck, Mr. Jack Krogen and Mr. Jerry Wissen. Each of these men are recognized experts concerning the problem at hand.

After considerable discussion it was mutually agreed that although the estimates range from 15 to 33½ percent, we, representing these major stores would commit ourselves on an approximate 25 percent. Thus, 25 percent of all inventory shrinkage would be attributable to shoplifting, but with an approximate shrinkage loss figure of \$5,134,000.00 you can readily see why we are so vitally interested in curbing this loss. You will be interested in knowing that the per capita average of all shoplift cases reported to my office in 1957 was \$24.04, that is the big ones and the little ones and everything else, this is a mean average, we ran a tape on them for your benefit. We also arrived at what we consider an equitable figure as to what percent of the shoplifters we actually apprehend.

It was agreed that it is approximately one out of twenty to thirty, it's a vague figure, but we had to settle for something we felt was fair. To demonstrate how we arrive at this figure, take the known gross shrinkage then take the previously quoted figure of 25 percent attributed to shoplifting, this gives us a figure of one-fourth of the gross dividing our known per capita average into this one-fourth we come up

with approximately 53,390 shoplifters. It sounds excessive, doesn't it, but let us pursue this a little further and see whether we have an impossible situation or not. We know that this year we will have approximately 3,000 shoplift cases, now that is only in our member stores, the stores I mentioned.

SENATOR COOMBS: Pardon me, how many stores?

MR. WICKLAND: The units represented figure about 29. We have already told you that in our opinion we only apprehend only one in every 20 or 30, so let us multiply 3,000 by 20 and lo and behold, we arrive at a figure of 60,000, so it is not impossible after all. Admittedly all figures are challengeable and we recognize this, areas, types of stores, types of merchandise have much to do with the whole picture.

Let me cite three of our pet cases which have caused us grave concern in the past. Number one, is the case of J. W. Robinson on a matter of a suede coat. The subject was observed in the sportswear department trying on suede coats, finally put one on and started down the aisle, walked 216 feet to the Grand Street door, this is a long ways out of the department. On the way down the aisle, which is a main aisle, he tore off the ticket and threw it on the floor, as he went over the threshold to what would be considered outside the store area proper, he looked back over his shoulder, saw two of our operators converging on him and quickly stepped back in. He was taken into custody and he was booked, but the point is this, we had one devil of a time getting a complaint on that man because he had been apprehended inside the store. Later on incidentally he jumped bail and we never have caught him since. Number two case was the case of Bullocks where a man stole two sport shirts in the basement area and went up to a stairway landing leading to the outside. There are no cash registers on these stairway landings, there never have been and there never will be, he stood there for approximately 15 minutes and the protection department had observed him steal the merchandise in the first place and they finally took him right there. They refused to issue a complaint on that case.

Then we have the case of the May Company on a boy who had been going all over the store on the various floors shoplifting, he had two large shopping bags, he had stolen merchandise on four out of six floors. The operator was following him and had put in the call for assistance from one of the men, he was moving so fast and she was moving so fast in order to keep up with him that the man never did catch up with her. She finally took him into custody by the elevators in the May Company downtown which as you know are right smack in the middle of the store. Again, we had a devil of a time getting a complaint, we finally did it but it took a lot of doing.

Following these three critical incidents we asked a representative of the district attorney's office to attend a meeting in our attorney's office, Schaefer, Hahn and Caldecott, for the purpose of clarifying like cases, in fact we had in attendance all of our top security men and the entire board of directors of Stores Protective Association. The explanation given to us was that an apprehension made inside the store was dangerous to the store because it is a generally accepted theory that if the subject leaves the premises that the intent is clearly established. We have no quarrel with that particular theory, in fact under some circumstances we agree completely except that in cases like these I just cited

and we have many more of them, we feel the owner of the merchandise should have the right and the privilege to protect his merchandise when someone picks it up and wanders away from a department throughout the store. We see no good reason to subject the merchant or any private citizen to possible civil action based on false arrest simply because he stops a person inside his store to inquire about his merchandise that this person has taken from one department to the other. Thank you.

SENATOR GRUNSKY: You are giving us the reasons for the proposed bill. Now I know Mr. Adrian Kragen is here, were you going to explain the bill?

MR. ADRIAN KRAGEN: Very briefly.

SENATOR GRUNSKY: All right, would you do so, sir.

MR. ADRIAN KRAGEN: You gentlemen are aware that the bill was introduced in order to put into statutory law in a very, we believe, succinct and clear manner, the case law. The problem that we have found in this area has been that although the California cases involving shoplifting and the civil actions thereafter as well as criminal action in relation to the particular shoplift is as advanced in protection of the merchant as any statutory or case law in the country, it's very difficult to persuade a jury or to get proper instructions or in some areas the judges to give the proper instructions and to avoid unjust damage awards against the store, a merchant, or in fact, as Mr. Wickland has pointed out, to convince a city attorney or a district attorney that a criminal complaint should be issued.

We therefore thought that a clear statement in the statute, and I know when the bill was introduced that was the intent of the author, would materially improve this situation without changing the law. There was a lot of discussion of, what we considered extraneous matter in relation to this problem, in the hearings originally on the one or other of the bills that were introduced covering this subject matter and it was felt that further discussion and consideration of the problem should be had.

I might point out in this regard that over the period of the last two years about 23 states have adopted bills either involving criminal and civil questions, that is, the criminal liability and the exclusion from civil liability of the merchant under the proper circumstances or in a few cases involving only the definition of shoplifting for criminal law purposes. As I say this, the first of those were Florida and Maine in 1955 and subsequently in 1956 and 1957 and now in Michigan in 1958 have adopted this type of legislation. There is a lot of discussion by store people throughout the United States, by district attorneys and other law enforcement groups as to the effectiveness of these measures and whether they will have the effect that some of the opponents of 2557 suggested during the last regular session of the Legislature on the so-called civil rights issues or on certain other areas. We think it's extremely important that some method of combating this ever increasing shoplifting burden on you, on everybody, because the merchant has a million in these 29 stores, a million plus dollars merchandise shoplifted, that is part of the cost of doing business and as a result it is going to be an effective item of cost in the merchandise that you and all the rest of us buy. So therefore we think for all of us concerned it is an essential.

On the other hand it seems quite important to us that whatever legislation California adopts does not derogate from the present good state of the California case law. And we felt that some of the suggestions that were made on amendments to the bill introduced into the Legislature last time would materially reduce the effectiveness and actually the import of the California law, and therefore we would like to suggest to the committee at this time to consider a continuing study of this problem. We are accumulating more and more material, not only on the facts of life of shoplifting and the effect on the economy but also upon the law and how the law has worked. We feel with the Maine, Florida, South Carolina, Michigan, Pennsylvania, Ohio and other laws having had in two years hence three, four or five years of operation, that we may well have a better idea of what the effect on citizens' rights will be, what the effect on shoplifting will be in those areas and we can see what the best law and the best method for California will be.

And we would therefore like to suggest, not a dropping of this legislation by any means, but a recommendation that the study be expanded so that we get all of the information on the other states in their operations and all the information that is available on the effect of shoplifting on the economy during this intervening period and then come up with what we believe is the best result or the best one to effect the purpose that I think we all want.

SENATOR GRUNSKY: Do you contemplate introducing a bill at the next session of the Legislature?

MR. KRAGEN: We do not contemplate asking that a bill be introduced.

SENATOR GRUNSKY: You don't think it will be ready by then?

MR. KRAGEN: We have nothing new to offer at this moment, now it may be that someone will suggest something or something will come up, we've had some discussions on it with the attorneys for Stores Protective and with others and maybe we can get an answer that we feel is good and that can meet or will not have the effect of being amended to make protection that hurts it rather than helps our situation.

SENATOR FARR: I would like to move that this present bill be kept in the committee for further study and suggest that if Mr. Kragen comes up with a bill he thinks is satisfactory that it be introduced and if you're not absolutely satisfied with the bill they have or if it doesn't answer your questions you might like to introduce it so that it would be put in the hands of all interested parties and perhaps referred for further study to an interim committee.

SENATOR GRUNSKY: Well then, the motion, in effect, is if you can get a bill in we would like to have it so that the latest draft can be publicly disseminated and made a subject of further interim committee study or if not that it is the recommendation of this interim committee that the subject matter be referred to the succeeding interim committee. All in favor of the motion signify by saying "Aye," contrary minded. The motion is carried.

MR. KRAGEN: We will present to you the things that are happening in this area if it is referred to a subsequent interim committee and all of the materials that are developed, for example, there are some law review articles that are being suggested.

e.

AMENDED IN SENATE MARCH 27, 1957

SENATE BILL

No. 1799

Introduced by Senator Farr

January 23, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to repeal Section 1111 of, and to add Section 1111 AND SECTION 1111A to, the Penal Code, relating to testimony by accomplices in criminal prosecution.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1111 of the Penal Code is repealed.

2 SEC. 2. Section 1111 is added to said code, to read:

3 1111. ~~At the request of the people or the defendant, or on~~
4 ~~its own motion, the court shall give the following instruction~~
5 ~~respecting testimony by accomplices: In all cases involving~~
6 ~~testimony given by an accomplice against an accused, the court~~
7 ~~shall instruct the jury as follows: A conviction may be had~~
8 ~~upon the uncorroborated testimony of an accomplice, but the~~
9 ~~testimony of an accomplice should be carefully scrutinized by~~
10 ~~you and received by you with great care and caution. An ac-~~
11 ~~complice is hereby defined as one who is liable to prosecution~~
12 ~~for the identical offense against the defendant on trial in the~~
13 ~~cause in which the testimony of the accomplice is given.~~

14 SEC. 3. Section 1111a of the Penal Code is added to said
15 Code, to read:

16 1111a. *In charging a jury the court may read the instruc-*
17 *tion set out in Section 1111 and no further instruction on the*
18 *subject of the corroboration of the testimony of an accomplice*
19 *need be given.*

This bill is a proposal to repeal Section 1111 of, and to add Section 1111 and Section 1111a to, the Penal Code.

The Subcommittee on Criminal Law and Procedure considered the bill and felt that allowing conviction on the uncorroborated testimony of an accomplice was a dangerous practice. It recommended that there be no further action or hearing on the bill.

f.

AMENDED IN SENATE APRIL 4, 1957

SENATE BILL

No. 1674

Introduced by Senator Farr

January 22, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 1203.005 to the Penal Code, relating to disqualification of probation officers.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1203.005 is added to the Penal Code,
2 to read:
3 1203.005. Whenever, pursuant to Section 1203, a case has
4 been referred for investigation and report to a probation
5 officer, the defendant's attorney, the district attorney, or such
6 probation officer may file with the referring court an affidavit
7 stating that there is good cause why the case should not be
8 investigated and reported on by such probation officer and
9 stating the facts constituting such good cause. If the court
10 concludes that there is, in fact, such good cause, it shall, by
11 ex parte order disqualify such probation officer from acting
12 in the case and refer the case for investigation and report to
13 the probation officer of another county, whose duty it shall be
14 to make the investigation and prepare the report as directed.
15 *In the event of the referral of the report by the court to a*
16 *probation officer of another county, the same shall be a charge*
17 *against the county from which the referral was made.*

This bill provided for disqualification of probation officers upon affidavit that the particular probation officer may be prejudiced and the matter then be referred to another probation officer for action.

The Subcommittee on Criminal Law and Procedure considered the bill at a hearing in March 1958, and felt that the bill had merit but should be clarified with respect to the following problems:

1. A large county where there is a probation officer with many assistants, it appearing to be proper in this case to have a deputy dis-

qualified and have the matter referred to another deputy for further action.

2. In the case of a small county having only one probation officer it would then appear proper for a probation officer to be brought in from an adjacent county at the expense of the county requesting the same.

An effort was made to reword the bill but it was determined by committee counsel that the following policy decisions would first have to be made:

1. If the affidavit of prejudice is directed to the chief probation officer, should the matter then be referred to an adjacent county regardless of the number of deputies in the office?

2. If the affidavit of prejudice is directed to one of the deputies, should the case then be assigned to another deputy in the same office or to a probation officer in an adjacent county?

3. How will either the district attorney or the defendant know which deputy the case has been assigned to in order to file his affidavit of prejudice prior to the receipt of the actual report? It would certainly seem unwise to wait until the report has been filed in the court before an affidavit of prejudice is made.

Committee counsel further stated that in order to effectuate an affidavit of prejudice against a deputy before work on the case is commenced by that deputy a procedure would have to be worked out for notification of the defendant and the district attorney, of the name of the deputy assigned to the case with a short period of time provided thereafter for an affidavit of prejudice to be made against that particular deputy.

It was noted further that these policy decisions would have to be discussed with representatives of the counties in order to effect a workable bill.

The committee made no recommendations on this bill because the policy decisions were not resolved.

g. ASSEMBLY BILL 986, SENATE BILL 816 (1957 Session)

A.B. 986 is a bill to add Chapter 2, comprising Sections 1510 to 1521, inclusive, to Title 12, Part 2 of the Penal Code and S.B. 816 is an act to add Chapter 2, comprising Sections 1510 to 1521, inclusive, to Title 12, Part 2 of the Penal Code.

The foregoing bills were briefly considered by the Subcommittee on Criminal Law and Procedure in March 1958 and determined that these are companion bills dealing with Postconviction Remedies and Procedures, which subject is now under study by the California Law Revision Commission. The subcommittee therefore recommended that further hearings be postponed until the Law Revision Commission completed its study with regard thereto.

h.

SENATE BILL

No. 1285

Introduced by Senator Dolwig

January 21, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 4532 of the Penal Code, relating to escapes by persons convicted of misdemeanors.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4532 of the Penal Code is amended to
2 read:

3 4532. (a) Every prisoner ~~formally~~ charged with or con-
4 victed of a misdemeanor who is confined in any county or
5 city jail or prison or industrial farm or industrial road camp
6 or who is engaged on any county road or other county work
7 or who is in the lawful custody of any officer or person, and
8 who thereafter escapes or attempts to escape from such county
9 or city jail, prison, industrial farm or industrial road camp
10 while engaged on or going to or returning from such county
11 work or from the custody of any officer or person in whose law-
12 ful custody he is, is guilty of a felony and, if such escape or
13 attempt to escape was not by force or violence, is punishable by
14 imprisonment in the state prison for not less than six months
15 nor more than five years, regardless of any prior convictions,
16 or in the county jail not exceeding one year; provided, how-
17 ever, that if such escape or attempt to escape is by force or
18 violence, such person is guilty of a felony and is punishable by
19 imprisonment in the state prison not exceeding 10 years, or in
20 the county jail not exceeding one year; provided, that when
21 said second term of imprisonment is to be served in the
22 county jail it shall commence from the time such prisoner
23 would otherwise have been discharged from said jail.

24 A conviction of violation of this subdivision, not by force
25 or violence, shall not be charged as a prior felony conviction
26 in any subsequent prosecution for a public offense.

27 (b) Every prisoner charged with or convicted of a felony
28 who is confined in any county or city jail or prison or in-
29 dustrial farm or industrial road camp or who is engaged on

1 any county road or other county work or who is in the lawful
2 custody of any officer or person, who escapes or attempts to
3 escape from such county or city jail, prison, industrial farm or
4 industrial road camp, or from the custody of the officer or
5 person in charge of him while engaged on or going to or re-
6 turning from such county work or from the custody of any
7 officer or person in whose lawful custody he is, is guilty of a
8 felony and is punishable by imprisonment in the state prison
9 not exceeding 10 years, or in the county jail not exceeding
10 one year; provided, that when said second term of imprison-
11 ment is to be served in the county jail it shall commence from
12 the time such prisoner would otherwise have been discharged
13 from said jail.

This bill is a proposal to amend Section 4532 of the Penal Code, dealing with escapes of persons involved in misdemeanors. It was heard by the Subcommittee on Criminal Law and Procedure in March 1958 and determined that the bill would create confusion in that it would provide, among other things, that any person who is in the lawful custody of an officer *or other person*, who attempts to escape, would be guilty of a felony, even though such person might merely be in custody after a citizen's or other informal arrest, without having been formally charged with a crime by appropriate authorities and having no formal proceedings or information against him.

Committee counsel noted that at the time this section was added to the code to make escapes from prison camps and other misdemeanors a felony, the Senate Judiciary Committee at that time required the insertion of the protection that the person must have been "formally" charged before such felony could occur, in order that he be warned of the fact that he was in proper and legal custody.

The subcommittee recommended that no further hearings be held in view of the above comments.

The full committee considered the bill at a hearing in September 1958 and requested that an opinion be obtained from Legislative Counsel. It was further recommended that if there is no present law with regard to escape from misdemeanors that a bill be drafted to correct the situation.

Thereafter, the following opinion was obtained from Legislative Counsel:

SACRAMENTO, CALIFORNIA
November 10, 1958

HONORABLE DONALD L. GRUNSKY
Lettunich Building
Watsonville, California

Escape—#4409

DEAR SENATOR GRUNSKY: Noting that Section 4532 of the Penal Code punishes escape by a person formally charged with a misdemeanor, you have asked whether, under existing law, it is a crime to escape, after arrest for misdemeanor but before a formal charge has been made, and, if not, that we draft a bill to make such escape a crime.

We do not find any provision that clearly makes this a crime, though Section 148 of the Penal Code could well be construed to have this effect. That section provides as follows:

"Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

This is the principal section under which resisting arrest is punished. However, we do not find any case in which the section has been applied to a simple escape from custody of the arresting officer.

The bill you requested is enclosed.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
TERRY L. BAUM
Deputy Legislative Counsel

The subject was again considered by the full committee at a hearing in December 1958, but no recommendation was made by the committee.

NOTE: During the 1959 Session, Senate Bill 283 relating to this subject was introduced, however, no committee action was taken. The bill was later referred to the office of Roy Gustafson, District Attorney of Ventura County.

6. PROBATE CODE

| <i>Bill number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| A.B. 827----- | 630 | Am |
| | 630.5 | Am |
| ----- | 480 and | Am |
| | 1802 | Am |
| ----- | 1130 to 1135 | Ad |
| ----- | 1431 | Am |

a.

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL

No. 827

Introduced by Mr. Caldecott

January 15, 1957

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Sections 630 and 630.5 of the Probate Code, relating to disposition of estates without administration.

The people of the State of California do enact as follows:

SECTION 1. Section 630 of the Probate Code is hereby amended to read:

630. When a decedent leaves no real property, nor interest therein nor lien thereon, in this State, and the total value of the decedent's property in this State, over and above any amounts due to the decedent for services in the armed forces of the United States, does not exceed ~~one thousand dollars (\$1,000)~~ *two thousand dollars (\$2,000)*, the surviving spouse, the children, ~~lawful issue or children of~~ *deceased children, the parent parents, the brother brothers or and sister sisters of* the decedent *or children of deceased brothers and sisters, in the order named*, or the guardian of the estate of any minor or insane or incompetent person bearing such relationship to the decedent, if such person ~~has or persons have~~ *are* a right to succeed to the property of the decedent, or ~~is the sole beneficiary~~ *all of the beneficiaries* under the last will and testament of the decedent, may, without procuring letters of administration, or awaiting the probate of the will, collect any money due the decedent, receive the property of the decedent, and have any evidences of interest, indebtedness or right transferred to ~~him~~ *them* upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of interest, indebtedness or right, with an affidavit showing ~~the right of the affiant or affiants to receive such money or~~ *property or to have such evidences transferred.*

- 1 SEC. 2. Section 630.5 of said code is amended to read :
2 630.5. Whether a person dies testate or intestate, and irre-
3 spective of the character of his or her property, if the value
4 of the estate does not exceed five thousand dollars (\$5,000),
5 the spouse of the decedent, if entitled by succession or by the
6 last will and testament of the decedent to any money of the
7 decedent on deposit in bank, may collect such money, not to
8 exceed the total sum of ~~five hundred one thousand~~ dollars
9 ~~(\$500)~~ (\$1,000), without procuring letters testamentary or of
10 administration, upon furnishing the bank with an affidavit
11 showing the right of the affiant to receive such money.

This bill was considered by both the Subcommittee on Real Estate and Probate and the full committee in March and December 1958. The subcommittee reported to the full committee that no further action be taken in view of difficulties anticipated with reference to creditors and determination of heirship. It was pointed out during the discussion that problems had heretofore been encountered where out-of-state heirs had claimed funds and not paid local creditors. It was therefore recommended that a bill in its present form be given unfavorable action during the 1959 Session, but if a different bill were presented it would be called for hearing in the usual course.

Subsequent Action Taken

During the 1959 Session Senate Bill 1019, relating to this subject, was introduced and is included in the 1959 report of the Standing Judiciary Committee (Part II of this report).

b. CONSERVATORSHIP

Proposal to clarify present conservatorship law.

The following proposal was presented to the interim committee by the California Bankers Association and had not been introduced during the 1957 Session. The subcommittee and committee report of hearings on the subject hereinafter set forth.

An act to amend Sections 480 and 1802 of the Probate Code and Sections 106, 1580, 1581, 1586 and 1587 of the Financial Code, relating to conservatorship.

The people of the State of California do enact as follows:

SECTION 1. Section 480 of the Probate Code is amended to read:

480. A corporation or association authorized to conduct the business of a trust company in this State may be appointed to act as an executor, administrator, guardian *or conservator* of an estate, or trustee, in like manner as an individual; but it shall not be appointed guardian *or conservator* of the person of a ward.

SEC. 2. Section 1802 of said code is amended to read as follows:

1802. The court in the order appointing a conservator of the estate or of the person and estate of another may, in its discretion, in any case in which the proposed conservatee as petitioner has waived the filing of bond, dispense with the filing of bond. In all other cases the conservator of the estate or of the person and estate of another, before ~~acting as such~~ *receiving letters of conservatorship*, must give a bond for the protection of the conservatee and of all persons interested in his estate, in an amount fixed by the court, which amount shall not exceed the bond required of a person appointed administrator. The court may reduce the bond required in this section in the manner provided in Section 541.1 of this code. Unless required by the court in its discretion, no bond shall be required of a conservator appointed only as conservator of the person of the conservatee. Two or more conservators in one proceeding may give a joint bond.

SEC. 3. Section 106 of the Financial Code is amended to read as follows:

106. "Trust business" means the business of acting as executor, administrator, guardian *or conservator* of estates, assignee, receiver, depository or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.

SEC. 4. Section 1580 of said code is amended to read as follows:

1580. A trust company has the following powers:

(a) It may act, or may be appointed by any court to act, in like manner as an individual, as executor, administrator, guardian *or conservator* of estates, assignee, receiver, depository, trustee, custodian, or in any other fiduciary or representative capacity for any purpose permitted by law, may act as transfer agent or registrar of corporate stocks and bonds, may buy and sell securities for the account of customers, and may accept and execute any trust business permitted by any law of this or any other state or of the United States to be taken, accepted, or executed by an individual; and

(b) A trust company, upon becoming a member of the Federal Reserve System, shall continue to have such powers as may then or thereafter be conferred upon it by the laws of this State, subject to such federal rules, regulations, and laws as may govern state banks exercising trust powers or trust companies which become members of the Federal Reserve System.

SEC. 5. Section 1581 of said code is amended to read as follows:

1581. For the purpose of this chapter, all trusts and other business permitted to be accepted or executed by a trust company are hereby classified and defined as either court trusts or private trusts.

A "court trust" is one in which a trust company acts under appointment, order, or decree of any court, as executor, administrator, guardian, *conservator*, assignee, receiver, depository, or trustee, or in which it receives on deposit money or property from a public administrator, under any provision of this code, or from any executor, administrator, guardian, assignee, receiver, depository, or trustee, under any order or decree of any court.

A "private trust" is every other trust, agency, fiduciary relationship, or representative capacity.

SEC. 6. Section 1586 of said code is amended to read as follows:

1586. Any court having jurisdiction of any executor, administrator, guardian, *conservator*, assignee, receiver, depository, or trustee, upon the application of any such officer or trustee or upon the application of any person having an interest in the estate or property administered by such officer or trustee, after such notice to the other parties in interest as the court may direct, or without notice if all parties in interest consent thereto, and after a hearing upon such application, may authorize or direct such officer or trustee, whether such person has duly qualified or not, to deposit any moneys then in his hands or which may come into his hands thereafter, and such portion or all of the personal assets of such estate as the court shall deem proper for safekeeping, with any such trust company. Upon such deposit being made the court shall by an order of record reduce the bond to be given, or theretofore given, by such officer or trustee so as to cover only the estate remaining in the hands of such officer or trustee. The money and property so deposited shall thereupon and thereafter be held by such trust company under the order and direction of the court.

Such trust company shall not be required to give any bond or security, except as provided in this division, in case of any deposit of moneys or other personal assets with it under this section. Its responsibility for the safekeeping of personal assets so deposited with it shall be that of a bailee for hire.

SEC. 7. Section 1587 of said code is amended to read as follows:

1587. Whenever an executor, administrator, guardian or *conservator* of estates, assignee, receiver, depository, or trustee is required to qualify by taking and subscribing an oath or to make an affidavit, any trust company acting in any such capacity may satisfy such requirement by the oath or affidavit of its president, vice president, secretary, assistant secretary, manager, trust officer, or assistant trust officer. Any such trust company shall be liable for its failure to perform any of the duties required by law to be performed by an individual acting in like capacity and shall be subject to the same penalties for such failure as would be applicable to an individual.

This proposal was considered by the Subcommittee on Real Estate and Probate at its hearing in October 1958.

Proponents submitted the following explanation in support of the measure:

Proposal to Clarify New Conservatorship Law

Before letters testamentary or letters of administration or guardianship are issued, the fiduciary must pay any bond which may be required (Probate Code Sections 541, 1480).

The provision for conservators, however, differs in providing that a conservator may be appointed and take his oath without, so far as express statutory requirement goes, filing any required bond, the only provision being that he must file it before acting as conservator (Probate Code Sections 1801, 1802).

Several problems are raised by this lack of conformity. First, banks, transfer agents and other third parties customarily rely on certified copies of letters as evidencing due appointment and capacity to act. Such reliance in the case of letters of conservatorship may be misplaced, however, in view of the fact that a conservator may receive his letters prior to posting a required bond.

A second and important problem, of course, is the fact that a conservator may deplete an estate with the assistance of letters he has obtained prior to obtaining a bond. Apparently the only thing that would actually cause a conservator to obtain a bond, unless it be informal requirement by the clerks, would be the conservator's own decision to get one.

Finally, the law is not clear with respect to the clerks' authority to issue letters to a conservator before a bond is filed, a number of county clerks indicating that they either do not feel they should, or in any case will not do so as a practical matter.

The problem could be met by amendment of Probate Code Section 1802 through the deletion of "acting as such" in the second sentence thereof and the insertion in lieu thereof of "receiving letters of conservatorship."

A second problem appears to require attention. Probate Code Section 481 states that a trust company appointed under Probate Code Section 480, i.e., to act as an executor, administrator, guardian of an estate or trustee, shall not be required to post any bond or security. This exemption was not amended to include conservatorships.

Unless the general provision of Section 1702 is sufficient, legislation will be required to exempt trust companies when acting as conservators from the possible requirement of filing a bond. Although not strictly necessary, reference to conservators may be made express in Financial Code Sections 1580, 1581, 1586 and 1587.

The subcommittee approved the proposal and recommended that it be presented to the full committee at its next meeting. It further recommended that the State Bar be notified of the action taken since the proposal had originated with them.

The proposal was later presented to the full committee at a hearing on December 4, 1958. Proponents advised the committee that the State Bar had been contacted and did not wish to take an exception or make any comments on the action taken by the subcommittee. It was therefore determined to approve the proposal and consider it only briefly during the 1959 Session.

Subsequent Action Taken

During the 1959 Session Senate Bill 272 relating to the subject of conservatorship was introduced and is included in the 1959 report of the Standing Judiciary Committee (Part II of this report).

c. COMPROMISE OF MINOR'S DISPUTED CLAIMS

Proposal to change Section 1431 of the Probate Code so as to permit the mother to represent a minor in court where it is difficult for the working father to appear.

This proposal was submitted to the interim committee during the interim and had not been introduced as a bill during the 1957 Session.

The law firm of Fine and Pope in Los Angeles had requested the committee to consider the proposal because of the difficulty and hardship created when working fathers were required to make court appearances.

The Subcommittee on Real Estate and Probate considered the proposal at a hearing in May 1958. Committee counsel explained that present law requires the father to approve settlement and appear in court at the time the matter is presented to the court for approval. The mother may appear when parents are separated and she has care or custody.

The subcommittee discussion brought out the question of the status of the father in control of funds and the importance of having the father present in court to tell the court he approved the settlement and for the court to then either approve it or point out that he is settling for an insufficient sum—in both cases pointing out the father's responsibility in the matter. It was also noted that some courts now require the appearance of both parents.

For the reasons stated the subcommittee recommended that no further action be taken in view of the adequacy of present law.

d. TESTAMENTARY TRUSTS OF LIFE INSURANCE PROCEEDS

An act to add Sections 1130 to 1135, inclusive, to the Probate Code, relating to testamentary trusts of life insurance proceeds.

I. Introduction

This subject first came to the attention of the interim committee in April 1958. The purpose of the proposed legislation was explained in the following letter received by Senator Edwin J. Regan, Chairman of the Senate Standing Judiciary Committee.

SAN FRANCISCO 4
April 11, 1958

SENATOR EDWIN J. REGAN
Chairman, Joint Interim Committee
on the Administration of Justice
Weaverville, California

DEAR SIR: At the suggestion of Gerald J. O'Gara, Esq., of the Legislative Committee of the San Francisco Bar Association, I am writing to you as Chairman of the Joint Interim Committee on the Administration of Justice. I should like to bring to the attention of your committee a suggestion I have made to the San Francisco Bar Association Committee for a statute dealing with the beneficiary designation of life insurance policies. I enclose two copies of the proposed draft of the statute which I hope will be of interest to you.

The problem with which this statute attempts to deal is the disposition of life insurance proceeds as a part of a testamentary trust. It often occurs that a husband who has a small estate, the bulk of which is in life insurance, wishes to leave it all to his wife, but in the event of her death to make some flexible use of these assets for the support and education of his children. If he resorts to a testamentary trust, which is the most commonly used instrument in this situation and which can provide the greatest flexibility, he finds himself in the situation where he cannot make his insurance proceeds payable directly to the testamentary trustee. The reason for this is a practical one, namely that life insurance companies either refuse to permit such a designation or strongly resist it. They believe they have sufficient reason for doing this since it is always possible for the insured testator to change his will at any time and at the time of his death it may therefore be impossible for the company to know which trust or which trustee to pay the proceeds to.

The insured testator, then, commonly follows one of two alternatives: (a) to have the proceeds made payable to his estate, in which event he forfeits the in-

heritance tax exemption on the proceeds and loses the benefit of the exemption of the proceeds from creditors' claims; or (b) he establishes an inter vivos insurance trust, in which event he goes to considerable additional nuisance and expense. It seems to me that neither of these alternatives is desirable or necessary. There has been considerable recent discussion of the problem and there has recently been enacted in Wisconsin a statute permitting a testamentary trustee to be named as beneficiary of life insurance. This statute has received favorable comment and it has served as a pattern of the enclosed draft. A statute with a similar objective has more recently been enacted in Pennsylvania.

I should very much appreciate your comments on the enclosed draft, and I will of course be glad to discuss it with you should you wish.

Yours very truly,

H. R. ROOKS

An act to add Sections 1130 to 1135, inclusive, to the Probate Code, relating to testamentary trusts of life insurance proceeds.

The people of the State of California do enact as follows:

SECTION 1. Sections 1130 to 1135 are added to the Probate Code, to read:

1130. A life insurance policy may be made payable to a trustee or trustees named or to be named or provided by will, if such beneficiary designation is made in accordance with the provisions of the policy and the requirement of the company issuing such policy.

1131. The trustee of a testamentary trust of proceeds of life insurance may be appointed by the court having jurisdiction of the administration of the estate of the insured decedent concurrently with or at any time after the admission to probate of the will of the insured, upon the petition of any person interested in such trust. The clerk shall cause notice of the hearing of such petition to be given in accordance with Section 1200 of the Probate Code, and at least 20 days prior to said hearing shall cause a copy of the notice of the hearing to be mailed to each of the heirs at law, legatees, and devisees of the insured (including all persons having an interest in said trust) and to the insurance company issuing such policy at its principal office in this State, if any, and if none, at its principal office. Such company or any person interested in said trust or in the estate of the insured may appear at the hearing and oppose such petition.

1132. Payment of the proceeds of a policy having such a beneficiary designation shall be made by the insurance company to the trustee named in the will of the insured as it exists at the time of the death of the insured upon the appointment of such trustee by the court under the provisions of Section 1131; but if either (a) no such trustee makes claim to such proceeds from the insurance company within six months after the death of the insured or (b) the insurance company at any time within such six-month period receives satisfactory evidence that no trustee will be so appointed, such proceeds shall be paid as otherwise provided by agreement with the insurance company during the lifetime of the insured, or to the executors, administrators, or assigns of the insured. Any payment made by the insurance company pursuant to this section shall operate as a full discharge of the company to the extent of such payment.

1133. The proceeds of such insurance, when paid to the trustee, shall be held, administered, and distributed under the terms of the trust established by such will and may be commingled with other assets distributed to such trust. Such trustee shall be subject to the jurisdiction of the court having jurisdiction of the estate of the insured in the same manner as though such proceeds had been payable to the estate of the insured; but such proceeds shall not otherwise be considered as payable to the estate of the insured and shall not be subject to debts of the insured or inheritance tax to any greater extent than as if they were payable to any named beneficiary other than the estate of the insured.

1134. In the event of the revocation of probate of a decedent's will or the admission to probate of a will containing provisions superseding such trust, a trustee appointed under the provisions of Section 1131 shall not be liable for any disbursements made in good faith and pursuant to the terms of the will of the insured theretofore admitted to probate.

1135. Nothing contained in Section 1130 or Section 1132 shall be deemed to invalidate any life insurance policy beneficiary designation previously made, or to alter any community property rights of the spouse of the insured.

The proposal was referred to the Subcommittee on Real Estate and Probate (a subcommittee of the Senate Interim Judiciary Committee) and first considered at a meeting in Sacramento on May 5, 1958.

It was recommended that it be set for further hearing and all interested persons be notified.

Prior to the scheduling of future hearings every effort was made to notify interested groups. Proponents of the bill advised that they had consulted with the Legislative Committee of the San Francisco Bar Association and that it had also been placed before the conference of State Bar delegates. It was also discussed with the Insurance Commissioner of the State of California and the California Inheritance Tax Department.

II. Proposal Considered by Subcommittee

The subcommittee again scheduled the subject for hearing on October 7, 1958, and notice was sent to the following persons:

F. Britton McConnell, Insurance Commissioner, State of California, 1182 Market Street, San Francisco 2.

California Inheritance Tax Department, A-247 Business and Professions Building Annex, 1021 O Street, Sacramento. San Francisco: 1218 Humboldt Bank Building. Los Angeles: 520 Rowan Building.

Bank of America N.T. & S.A. Att.: Walter E. Bruns, 300 Montgomery Street, San Francisco.

Mr. Trev A. Burrow, California Association of Insurance Agents, Office Suite A, Hotel Claremont, Berkeley 5.

California Bankers Association, Mr. Philip J. Gregory, 275 Bush Street, San Francisco 4.

Mr. Donald C. Burns, California State Association of Life Underwriters, Inc., 41 Sutter Street, San Francisco 4.

Mr. H. Harold Leavey, California Western States Life Insurance Company, 2020 L Street, Sacramento.

Independent Mortgage Bankers Association, Suite 1616, Mills Tower, San Francisco 4.

Mr. Eugene J. Sullivan, 68 Post Street, Room 221, Insurance Brokers Exchange of California, San Francisco.

Mr. Leland B. Groezinger, Life Insurance Association of America, 400 Montgomery Street, San Francisco.

The meeting of October 7, 1958, was held in Coronado, California, with the following persons attending:

Present:

Senator Richard J. Dolwig, Chairman,

Subcommittee on Real Estate and Probate

Senator Donald L. Grunsky, Interim Chairman

Senator John William Beard

Senator James A. Cobey

Senator Nathan Coombs

John A. Bohn, Committee Counsel

Witnesses:

Harold R. Rooks, Pillsbury, Madiso and Sutro, San Francisco.

Donald C. Burns, Executive Secretary,

California State Association of Life Underwriters.

Howard L. Jeske, California Western States Life Insurance Company.

Mr. Rooks reviewed the proposal and explained that insurance companies are now reluctant to accept as a beneficiary designation the words "the trustee under my will" or words to that effect, for the reason that even if the trustee is known the testator still has the right to revoke his will or change the trustee.

Mr. Donald C. Burns, representing the California State Association of Life Underwriters, stated that this group was in agreement with the proposal and presented minor suggestions as to code designation.

Mr. Howard L. Jeske testified that his organization had no particular position with respect to the proposal, except to reiterate that there is now a very great reluctance on the part of insurance companies to permit testamentary dispositions such as this and stressing the inability of the company to be sure that the funds or proceeds were being properly paid out. He added that with the protections set forth in the proposal there should no longer be any great reluctance on the part of the companies to allow such a designation to be made. He further suggested that should this become law it might well be that the insurance companies may still require that an alternative or contingent beneficiary be named in the policy in the event the insured fails to carry out this plan, which would further relieve the uncertainty which would otherwise exist.

Committee counsel then read into the record the following letters:

1. From James W. Hickey, Chief Inheritance Tax Attorney, State of California, stating "We have examined the proposed legislation and feel that the matter is one for the Legislature. We do, however, call the committee's attention to proposed Section 1137.3 which exempts the proceeds of insurance policies which otherwise are taxable. We call this to the committee's attention in view of the fact that the next session undoubtedly will be confronted with the raising of additional revenues and may not want to consider any legislation that would narrow the tax base."

2. From Leland B. Groezinger, representing Life Insurance Association of America, stating that although they were not sponsoring the proposal they had no objection to it and suggesting minor technical changes.

Mr. Rooks explained that if life insurance is payable to a decedent's estate the proceeds are taxable, but if to a named beneficiary the proceeds are exempt to the extent of \$50,000.

Senator Cobey then suggested that committee counsel direct a letter to the Tax Division requesting that they advise just how much they had collected in the way of revenue in the past from such testamentary trusts and this would determine whether or not a loss of revenue is involved.

Further suggestions were made by the committee as to possible amendments and revisions so that funds might be exempt from tax if beneficiaries are within a certain group such as a family.

It was then recommended that the proposal be again scheduled for hearing at the next meeting of the full committee at which time the revised draft would be considered.

Committee counsel thereafter directed a letter to Mr. James W. Hickey, Chief Inheritance Tax Attorney, in accordance with the committee's instructions. The reply stated "We do not have any statistics from which we could estimate a loss in revenue should the legislation to which you refer be enacted into law. Under the present law, insurance payable to the estate, or the executor, or administrator is subject to tax. Under the provisions of the proposed legislation another loophole might be opened up and all insurance, regardless of the amount, be exempted if made payable to a testamentary trustee."

III. Consideration by Full Committee

In accordance with the committee's suggestion, this subject was again considered by the full committee at its hearing on December 4, 1958, in Los Angeles.

Proponents of the measure submitted a revised draft incorporating the suggestions made at the prior hearing. This draft is set forth as follows and is discussed in the testimony that follows.

Proposed Legislation Affecting Testamentary Trusts of Life Insurance Proceeds (Revised Draft, November 1958)

An act to add Section 10177 to the Insurance Code, to add Sections 1137 through 1137.2 to the Probate Code, and to amend Section 1372½ of the Revenue and Taxation Code, relating to testamentary trusts of life insurance proceeds.

The people of the State of California do enact as follows:

SECTION 1. Section 10177 is added to the Insurance Code, to read:

10177. A life insurance policy may be made payable to a trustee or trustees named or to be named or provided by will, if such beneficiary designation is made in accordance with the provisions of the policy and the requirements of the company issuing such policy.

Payment of the proceeds of a policy having such a beneficiary designation shall be made by the insurance company to the trustee of the trust set forth in the will of the insured as it exists at the time of the death of the insured upon the appointment of such trustee by the court under the provisions of Section 1137 of the Probate Code; but if either (a) no such trustee makes claim to such proceeds from the insurance company within six months after the death of the insured or (b) the insurance company at any time within such six-month period receives satisfactory evidence that no trustee will be so appointed, such proceeds shall be paid as otherwise provided by agreement with the insurance company during the lifetime of the insured, or in the absence of such agreement to the personal representative of the insured. Any payment made by the insurance company pursuant to this section shall operate as a full discharge of the company to the extent of such payment.

Nothing contained in this section shall be deemed to invalidate any life insurance policy beneficiary designation previously made, or to alter any community property rights of the spouse of the insured.

SEC. 2. Sections 1137 through 1137.2 are added to the Probate Code, to read:

1137. The trustee of a testamentary trust of proceeds of life insurance may be appointed by the court having jurisdiction of the administration of the estate of the insured decedent concurrently with or at any time after the admission to probate of the will of the insured, upon the petition of any person interested in such trust. The clerk shall cause notice to be given as required upon a petition for the probate of a will to all persons interested in the estate of the insured decedent, to all persons

interested in such trust, and to the insurance company issuing such policy at its principal office in this state, if any, and if none, at its principal office. Such company or any person interested in said trust or in the estate of the insured may appear at the hearing and oppose such petition.

1137.1. The proceeds of such insurance, when paid to the trustee so appointed, shall be held, administered, and distributed under the terms of the trust set forth in such will and may be commingled with other assets distributed to the trustee of such trust. Such trustee shall be subject to the jurisdiction of the court having jurisdiction of the estate of the insured in the same manner as though such proceeds had been distributed to such trustee by a decree of distribution of the estate of the insured; but such proceeds shall not otherwise be considered as payable to the estate of the insured and shall not be subject to the claims of creditors of the insured or his estate to any greater extent than as if they had been payable to any named beneficiary other than the estate of the insured.

1137.2. In the event of the revocation of probate of the decedent's will or the admission to probate of a will containing provisions superseding such trust, a trustee appointed under the provisions of Section 1137 shall dispose of such proceeds as the court may direct and shall not be liable for any acts performed or disbursements made in good faith and pursuant to the terms of the will of the insured theretofore admitted to probate.

SEC. 3. Section 13724 of the Revenue and Taxation Code is amended to read as follows:

13724. In addition to the exemptions allowed by this part, the payment or right to receive payment of fifty thousand dollars (\$50,000) of the proceeds of either of the insurance policies mentioned in Section 13723 is not subject to this part, with the following limitations:

(a) Where there is more than one policy, whether of the same or a different type, only fifty thousand dollars (\$50,000) of the aggregate proceeds is not subject to this part.

(b) Where there is more than one beneficiary, the fifty thousand dollars (\$50,000) shall be prorated among the beneficiaries in proportion to the amount of insurance payable to each.

In construing this section it shall be deemed that an insurance policy is within the provisions of Section 13723 which is payable to a trustee or trustees named in the will of the insured, except to the extent that the provisions of such trust direct the use of the proceeds of such policy in payment of the debts of the insured, his funeral expenses, the expenses of administration of his estate, or the taxes due by reason of his death.

MR. ROOKS: Mr. Chairman, my name is Harold Rooks. I am an attorney. My address is 225 Bush Street, San Francisco. I have proposed this bill, which was before the interim subcommittee of this committee for hearing in Coronado. Do you wish me to review the problem with which this bill attempts to deal, the main status, or simply the changes that have taken place since the—

SENATOR GRUNSKY: Well, it may not be necessary, Mr. Bohn, would you paraphrase the status of this bill and we will see how much we need?

MR. BOHN: This bill was heard at the subcommittee hearing in Coronado. At that time the subcommittee had information before it that it might cause a reduction in tax collections insofar as state inheritance taxes were concerned. I was accordingly instructed to get in touch with the tax division, to ask them, what, if any, difference the passage of this bill would make in tax revenue. My recollection is that they responded that they could not exactly calculate it but felt that there might be some and I asked them at that time to have a representa-

tive present here today. Is anybody here from the tax attorney's office? Perhaps after you tell us briefly what the bill does, I could read into the record their letter.

MR. ROOKS: Briefly, the purpose of the bill is to bridge a hiatus in the law to permit life insurance proceeds to be paid to a testamentary trust, still retaining, some advantages that life insurance has over aspects of assets which pass through the estate of a decedent. Specifically, those are exemptions from creditors claims and also an exemption from inheritance tax to a limited extent and exemption from administration expenses in the estate of a decedent. This bill would also permit the use of the life insurance proceeds as a unit with the assets of the estate in a testamentary trust. The hiatus develops because of the fact that there is no way in which the law can accommodate dealing in one transaction between a will and a trust. There is no prohibition of this type of thing in the law. The insurance companies, when presented with a request to do what this bill attempts to do now must resist or deny or reluctantly concede to a request of this kind because of the fact that there is uncertainty in the law which this bill is designed to clarify.

Specifically, the inheritance tax exemption for insurance is, to a limited extent, namely a fifty-thousand dollar exemption in the case of insurance payable to the named trustee or to a named beneficiary. I beg your pardon. The proposed bill attempts to preserve the exemption which is available in the case of a named beneficiary in the case where the trustee under the will is named as the beneficiary. It does this by an amendment to Revenue and Taxation Code, Section 13724 and in substance the amendment simply states that in construing this exemption section, a policy payable to a named testamentary trustee is to be deemed as one payable to a named beneficiary.

I was surprised at the letter from Mr. Hickey to Mr. Bohn and of the possibility that a loophole might be created in the tax laws whereby insurance proceeds might be exempted entirely from the operation of the inheritance tax laws. I have revised the bill from the forms submitted to the subcommittee to accommodate this objection and I have discussed the amendment which I have submitted at this time, by telephone to Mr. Hickey, and while I do not want to commit him in his absence, I believe that the amendment will accommodate all objections that he has had previously to the bill.

SENATOR DOLWIG: Pardon me, Mr. Chairman, are those amendments incorporated in this proposal?

MR. ROOKS: I do not have a copy of that, sir, but they are incorporated in the latest draft which I submitted to this committee, which includes an amendment to the section of the Revenue and Taxation Code.

SENATOR DOLWIG: Section 3?

MR. ROOKS: Yes sir, there is a paragraph added at the end of Section 13724 of the Revenue and Taxation Code which is the amendment that I have made since the subcommittee hearing.

SENATOR DOLWIG: In other words, it is the language that it shall be deemed that an insurance policy—and so forth?

MR. ROOKS: Yes sir, that is it.

SENATOR DOLWIG: All right.

SENATOR GRUNSKY: Mr. Bohn, do you have any discussion or anything that can bring us to a head? Senator Regan.

SENATOR REGAN: I have only read the bill hurriedly. Is there any possibility of a decedent, that is prior to his death, who probably owed a substantial sum of money to creditors, tax monies and many other things, converting his assets into a policy of life insurance, purchasing it and then setting up a trust of this kind and in any way defeat the attempts of his creditors prior to his death to recover from him and where under ordinary circumstances, without this bill, such recovery could be made?

MR. ROOKS: I believe that the question is answered, sir, by a portion of the amendment to the Probate Code here in which it is stated that the insurance when made payable as indicated in this bill, is exempt from claims of creditors of the decedent and of his estate to the same extent as if the policy had been payable to any other named beneficiary other than the estate. In other words, such possibility as there is of the type of thing that you mentioned is as possible here as it was before, there is no change made or intended to be made in that situation.

SENATOR GRUNSKY: Any further questions?

SENATOR REGAN: I am just wondering about the propriety of it. Maybe you can speak to that phase of the matter. Ordinarily, where there is an insurance policy made payable to an individual in the ordinary course of transactions between parties there is the usual life insurance purpose and I am just wondering if we extend this beyond the named individual to a trustee and set up certain specifics which ordinarily you don't do when the average person is the recipient of the proceeds from an insurance policy. Are we opening up a new field of procedure too, in the normal course of transactions which will happen after this bill becomes effective?

MR. ROOKS: I think it's an answer to that, sir, to say that this testamentary trust is simply a substitute for a living trust. In other words, commonly the problem that this bill is dealing with is solved by having the policy made payable to an intervivos living trust which is established during the lifetime of the decedent. This is a mechanical means to simplify the steps involved in accomplishing the ultimate objective by eliminating that separate step of an intervivos trust. In other words, can I answer your question now as to transferring assets in the fraud of creditors? That avenue is equally open now if that's what is sought through the device of the intervivos trust and the exemption of creditor's claims that insurance enjoys is not intended to be disturbed or enlarged in any way but simply another means of accomplishing the same objective with less nuisance and expense to the insured is what it wanted.

SENATOR GRUNSKY: Mr. Bohn, did you have a letter from somebody on this?

MR. BOHN: I have a letter from the State Bar in connection with various items on the agenda. As to this item, the State Bar letter reads as follows: "It was the board's view that the State Bar was presently in no position to have a representative present at the hearings to express its views on the several matters on the agenda. For example, item No. 2 on Thursday's agenda appears to be the same matter as the 1958 Conference of State Bar Delegates' Resolution No. 1. The conference approved the resolution in principle and recommended that the board refer the matter to a State Bar committee for such redrafting as may be necessary. The board will consider this matter at its meeting December 17th-20th, 1958."

SENATOR GRUNSKY: Well, then, if I am not mistaken that is an item we are not in a position to take final action on unless you want to take it without the recommendation of the State Bar, is that correct?

MR. BOHN: Yes, unless you want to take it subject to what they might bring up later on.

SENATOR GRUNSKY: Well, what is the will of the committee? Now don't we have a meeting scheduled after we are in Sacramento where we are going to hear the State Bar program?

MR. BOHN: Yes, you have January 6 and 7, as I recall. They have asked to be heard the second week of the session for the full State Bar program.

SENATOR GRUNSKY: Well, of course, we are not going to be able to hear all those bills and take final action on them as an interim committee, it looks like it will just be a preview of their program.

SENATOR REGAN: I have a suggestion as far as this bill is concerned. If the committee members here are satisfied with this bill and assuming no objection comes from the State Bar program, could we take conditional action here today?

SENATOR GRUNSKY: Do you wish to make a motion then to that effect? All right, then for the record, will you state the motion, Mr. Bohn, in the conditional language which we have adopted for this type of situation?

MR. BOHN: That appropriate notice has been given to all parties who have expressed an interest and to our full mailing list of the pendency of this bill and that the action of the committee today to approve the bill will be in substance that they do not wish to hear further testimony on the bill at the Legislative Session in January, but will process it in accordance with the vote, subject, I gather, to Senator Regan's suggestion that if in fact, the State Bar opposes the bill or comes up with other suggestions that the matter may wish to be reviewed at that time.

SENATOR GRUNSKY: All right, any discussion? Yes, Mr. Gregory.

MR. GREGORY: Mr. Chairman, gentlemen, I am Philip Gregory, representing the California Banker's Association. I don't want to be understood to be appearing in opposition to the bill, because we approved the principle of this proposal and we have worked with Mr.

Rooks previously on a number of specific points. However, we only received the draft this morning and so haven't had time to consider it, so in accordance with your interim procedures, I would just like to mention that and have the opportunity, if necessary, to make some specific suggestions later on.

SENATOR GRUNSKY: Well, can you make them in writing? You understand what we are trying to do is to avoid congested calendars and hearings during the session, so that if you approve of the language, then similar to the conditional matter with relation to the State Bar, if you have no opposition there is no reason for us to take 20 minutes.

MR. GREGORY: I will be in communication with your counsel on that.

SENATOR GRUNSKY: All right, I think the form of the motion sufficiently covers opposition from all sources, am I correct?

SENATOR BUSCH: No, it does not, not as so worded by John Bohn.

SENATOR GRUNSKY: Oh, he just said "State Bar opposition." Well, all right, then, may the motion be amended then Senator Regan to include any opposition, if not communicated to the committee, it will then come up without further hearing.

MR. ROOKS: Mr. Chairman, if I may interrupt, I believe there are two other persons present who would like to be heard in support of the bill, just momentarily.

SENATOR GRUNSKY: Well, if it will be simply cumulative and redundant if they would come forward just for the record and state their name, but avoid repetition, we would appreciate it.

ROBERT BROWN, JR.: Senator Grunsky, Mr. Bohn and members of the committee, I am Robert Brown, Jr., president of the Los Angeles Life Underwriters Association and a director of the California State Association of Life Underwriters and my address is 523 West Sixth Street, Los Angeles, California. I would like to submit copies that I have for each member of the committee of the position of the California State Association of Life Underwriters and if I may take a moment to read this very brief statement regarding their position on the proposed Probate Code amendment. "The California State Association of Life Underwriters believe that the proposed amendment to the Probate Code relating to testamentary trusts of life insurance proceeds, as discussed by Mr. Harold Rooks before the Senate Interim Judiciary Committee October 7th, will, if adopted, serve to clarify the ambiguity in the code which now discourages this valid use of life insurance proceeds. This organization will, therefore, support this proposed legislation and urge that the Senate Judiciary Committee include the measure as a committee bill. As we have stated before we believe that the proposed Section 1137 of the Probate Code reading 'A life insurance policy may be made payable to a trustee or trustees named or to be named or provided by will, if such beneficiary designation is made in accordance with the provisions of the policy and the requirements of the company issuing such policy,' should also be amended into the Insurance Code by a proper cross reference. Donald C. Burns, Executive Secretary."

I would like to say that many of the life companies now are reluctant to name directly the testamentary trust under will as the beneficiary because of certain practical problems and the ambiguity that presently exists. But speaking for the Life Underwriters Association, we think that this will make it easier for estate planners to administer life insurance, which is to the advantage of the public as well as to the institution of life insurance. I am referring to the insurance buying public. So we strongly support this bill and urge your favorable action. Thank you very much for your time.

SENATOR GRUNSKY: Thank you. Now the next witness, would you identify yourself?

MR. KILPATRICK: Chairman, my name is Robert Kilpatrick. I am a lawyer in private practice in Long Beach. I don't represent any organized group except my own clients. I have a growing estate planning practice which is constantly beset by the problem which Mr. Rooks' legislation would solve and for that reason I am completely in support of it.

SENATOR GRUNSKY: Thank you. Any further witnesses to testify on the motion. The motion is before the committee, all in favor (start of record no. 9) signify by saying "Aye." Contrary minded. Motion is carried.

Following this hearing the California Bankers Association advised the committee that they had no further objection "of any substance to the drafting of this measure and, furthermore, believe that it will meet problems which arise from time to time and that it merits the favorable consideration of the committee."

A bill on the subject was introduced at the 1959 Session of the Legislature (Senate Bill 274) and is included in the report of the Senate Judiciary Standing Committee.

7. PUBLIC RESOURCES

| <i>Bill number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| A.B. 2920_____ | 3700 to 3732 | Ad |

a. OIL AND GAS LIEN ACT

AMENDED IN SENATE JUNE 7, 1957

AMENDED IN SENATE JUNE 5, 1957

AMENDED IN SENATE MAY 24, 1957

AMENDED IN SENATE MAY 22, 1957

AMENDED IN ASSEMBLY APRIL 11, 1957

CALIFORNIA LEGISLATURE—1957 REGULAR SESSION

ASSEMBLY BILL**No. 2920**

Introduced by Mr. Kelly
(By request)

January 22, 1957

REFERRED TO COMMITTEE ON MANUFACTURING, OIL, AND MINING INDUSTRY

An act to add Chapter 4 (commencing at Section 3700) to Division 3 of the Public Resources Code, relating to oil and gas liens.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4 (commencing at Section 3700) is
2 added to Division 3 of the Public Resources Code, to read:

3

4

CHAPTER 4. OIL AND GAS LIENS

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3700. This chapter shall be known and may be cited as
the Oil and Gas Lien Act.

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3701. Unless the context otherwise requires, the definitions
hereinafter set forth shall govern the construction of this
chapter.

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3702. "Person" means an individual, corporation, firm,
partnership, or association.

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3703. "Owner" means a person holding any interest in
the legal or equitable title or both to any leasehold for oil or
gas purposes, or any pipeline, or his agent, and shall include
purchasers under executory contract, receivers, and trustees.

1 3704. "Contract" means a contract, written or oral, ex-
2 press or implied, or partly express and partly implied, or
3 executory or executed, or partly executory and partly executed.

4 3705. "Material" means material, machinery, equipment,
5 appliances, buildings, structures, tools, bits, or supplies but
6 does not include rigs or hoists or their integral component parts
7 except wire lines.

8 3706. "Labor" means work performed in connection with
9 drilling or operating in the production of oil or gas or the
10 construction of a pipeline in return for wages.

11 3707. "Services" means work performed exclusive of labor,
12 including the hauling of material, whether or not involving
13 the furnishing of material.

14 3708. "Furnish" means sell or rent.

15 3709. "Drilling" means drilling, digging, torpedoing, acid-
16 izing, cementing, completing, or repairing.

17 3710. "Operating" means all operations conducted on the
18 lease in connection with or necessary to the production of oil
19 or gas.

20 3711. "Construction" means construction, maintenance,
21 operation, or repair.

22 3712. "Pipeline" means any pipeline laid and designed as
23 a means of transporting natural gas, oil, or gasoline, or their
24 components or derivatives, and the right of way therefor.

25 3713. "Original contractor" means any person for whose
26 benefit a lien is prescribed under Section 3714.

27 3714. Any person who shall, under contract with the owner
28 of any leasehold for oil or gas purposes or any pipeline, per-
29 form any labor or furnish any material or services used or
30 employed, or furnished to be used or employed in the drilling
31 or operating of any oil or gas well upon such leasehold, or in
32 the construction of any pipeline, or in the constructing,
33 putting together, or repairing of any material so used or em-
34 ployed, or furnished to be used or employed, shall be entitled
35 to a lien under this chapter, whether or not a producing well
36 is obtained and whether or not such material is incorporated
37 in or becomes a part of the completed oil or gas well, or pipe-
38 line, for the amount due him for any such labor performed,
39 or materials or services furnished, within six months of the
40 date of recording the statement of lien as provided in Section
41 3723, including without limitation shipping *and mileage*
42 charges connected therewith, and interest from the date the
43 same was due.

44 3715. Liens created under Section 3714 shall extend to:

45 (a) The leasehold for oil or gas purposes to which the ma-
46 terials or services were furnished, or for which the labor was
47 performed, and the appurtenances thereunto belonging, ex-
48 clusive of any and all royalty interests, overriding interests
49 and production payments created or recorded prior to the date
50 such materials or services were first furnished or such labor
51 was first performed; and

1 (b) All materials and fixtures owned by the owner or owners
2 of such leasehold and used or employed, or furnished to be
3 used or employed in the drilling or operating of any oil or gas
4 well located thereon; and

5 (c) All oil or gas wells located on such leasehold, and the
6 oil or gas produced therefrom, and the proceeds thereof, exclu-
7 sive of the interest therein owned by the owners of royalty
8 interests, overriding royalty interests and production pay-
9 ments created or recorded prior to the date such materials
10 or services were first furnished or such labor was first per-
11 formed; or

12 (d) The whole of the pipeline to which the materials or serv-
13 ices were furnished, or for which labor was performed, and all
14 buildings and appurtenances thereunto belonging, including,
15 without limiting the generality of the foregoing, gates, valves,
16 pumps, pump stations, and booster stations, and upon all mate-
17 rials and fixtures owned by the owner of such pipeline and used
18 or employed or furnished to be used or employed in the con-
19 struction thereof.

20 3716. Any person who shall, under contract, perform any
21 labor or furnish any material or services as a subcontractor
22 under an original contractor or for or to an original contractor
23 or a subcontractor under an original contractor, shall be en-
24 titled to a lien upon all the property upon which the lien of an
25 original contractor may attach to the same extent as an
26 original contractor, and the lien provided for in this section
27 shall further extend and attach to all materials and fixtures
28 owned by such original contractor or subcontractor to or for
29 whom the labor is performed or material or services furnished
30 and used or employed, or furnished to be used or employed in
31 the drilling or operating of such oil or gas wells, or in the
32 construction of such pipeline.

33 3717. If a lien provided for in this chapter attaches to a
34 leasehold estate, forfeiture of such estate shall not impair any
35 lien as to material, appurtenances and fixtures located thereon
36 and to which such lien has attached prior to forfeiture. If
37 a lien provided for in this chapter attaches to an equitable
38 interest or to a legal interest contingent upon the happening
39 of a condition subsequent, failure of such interest to ripen
40 into legal title or such condition subsequent to be fulfilled,
41 shall not impair any lien as to material, appurtenances and
42 fixtures located thereon and to which said lien had attached
43 prior to such failure.

44 3718. Anything in this chapter to the contrary notwith-
45 standing, any lien claimed by virtue of this chapter insofar
46 as it may extend to oil or gas or the proceeds of the sale of oil
47 or gas shall not be effective against any purchaser of such oil
48 or gas until written notice of such claim has been delivered
49 to such purchaser. Such notice shall state the name of the
50 claimant, his address, the amount for which the lien is claimed,

1 and a description of the leasehold upon which the lien is
2 claimed. Such notice shall be delivered personally to the pur-
3 chaser or by registered letter deposited in the United States
4 mails. Upon receipt of such notice the purchaser shall withhold
5 payments for such oil or gas runs to the extent of the lien
6 amount claimed until delivery of notice in writing that the
7 claim has been paid. The funds so withheld by the purchaser
8 shall be used in payment of the lien judgment upon fore-
9 closure. The lien claimant shall within 10 days give notice
10 in writing that the claim has been paid.

11 3719. Nothing in this chapter shall be deemed to fix a
12 greater liability upon an owner in favor of any claimant under
13 an original contractor than the amount for which the owner
14 would be liable to the original contractor. Payment by the
15 owner to the original contractor of all or any part of the con-
16 tract price, prior to the receipt of notice that a lien is claimed
17 by a person other than an original contractor, shall operate to
18 discharge and satisfy all liens attaching to the property of such
19 owner by virtue of this chapter to the extent of such payment.
20 The risk of all payments made by the owner to the original
21 contractor, except as above provided, shall be upon the owner
22 after the receipt of notice that a lien is claimed by a person
23 other than the original contractor. An owner shall not have the
24 right, after receiving notice that a lien is claimed by a person
25 other than an original contractor, to offset obligations of the
26 original contractor unless such obligations arise out of the
27 original contract.

28 3720. The lien provided for in this chapter arises on the
29 date of the furnishing of the first item of material or services
30 or the date of performance of the first labor. Upon compliance
31 with the provisions of Section 3723, such lien shall be pre-
32 ferred to all other titles, charges, liens or encumbrances which
33 may attach to or upon any of the property upon which a lien
34 is given by this chapter subsequent to the date the lien herein
35 provided for arises.

36 3721. All liens affixed by virtue of this chapter upon the
37 same property shall be of equal standing except that liens
38 of persons for the performance of labor shall be preferred to
39 all other liens affixed by virtue of this chapter.

40 3722. All labor performed or materials or services fur-
41 nished within six months of the date of recording the statement
42 of lien as provided in Section 3723 by any person entitled to a
43 lien under this chapter upon the same leasehold for oil and
44 gas purposes or the same pipeline shall for the purposes of
45 this chapter be considered as having been performed or fur-
46 nished under a single contract regardless of whether or not the
47 same was performed or furnished at different times or on sep-
48 arate orders; provided, that no more than four months shall
49 have elapsed between the date of performance of such labor
50 or the date of furnishing such material or services and the date

1 on which labor is next performed or materials or services are
2 next furnished.

3 3723. Every person claiming a lien under this chapter,
4 shall record in the office of the county recorder for the county
5 in which such leasehold, or pipeline, or some part thereof, is
6 situated, a statement verified by affidavit setting forth the
7 amount claimed and the items thereof, the dates on which
8 labor was performed or material or services furnished, the
9 name of the owner of the leasehold, or pipeline, if known, the
10 name of the claimant and his mailing address, a description of
11 the leasehold, or pipeline, and if the claimant be a claimant
12 under Section 3716, the name of the person for whom the
13 labor was immediately performed or the material or services
14 were immediately furnished. The statement of lien must be
15 recorded within ~~four~~ six months after the date on which the
16 claimant's labor was last performed or his material or services
17 were last furnished under a single contract as provided for in
18 Section 3722. No lien shall arise as to any amount claimed for
19 any item of materials, services or labor, which was not fur-
20 nished or performed within six months of the date the state-
21 ment of lien is recorded as provided herein. *were furnished.*

22 3724. (a) Whenever any lien or liens shall be claimed or
23 recorded under the provisions of this chapter then the owner
24 of the property on which the lien or liens are claimed or the
25 contractor or subcontractor through whom such lien or liens
26 are claimed, or either of them, may record a bond with the
27 county recorder of the county in which the property is located
28 as herein provided. Such bond shall describe the property on
29 which lien or liens are claimed, shall refer to the lien or liens
30 claimed in manner sufficient to indemnify them and shall be
31 in an amount equal to 150 percent of the amount of the
32 claimed lien or liens referred to and shall be payable to
33 the party or parties claiming same. Such bond shall be exe-
34 cuted by the party recording same as principal and by a
35 corporate surety authorized to execute such bonds as surety
36 and shall be conditioned substantially that the principal and
37 surety will pay to the obligees named or their assigns the
38 amounts of the liens so claimed by them with all costs in the
39 event same shall be proven to be liens on such property.

40 (b) Any purchaser or lender may rely upon the record of
41 such bond in acquiring any interest in said property and shall
42 absolutely be protected thereby.

43 (c) Such bond, when recorded, shall take the place of the
44 property against which any claim for lien referred to in such
45 bond is asserted. At any time within the period of time pro-
46 vided in Section 3725 any person claiming such lien may sue
47 upon such bond but no action shall be brought upon such
48 bond after the expiration of such period. One action upon
49 such bond shall not exhaust the remedies thereon but each

1 obligee or assignee of an obligee named therein may maintain
2 a separate suit thereon in any court having jurisdiction.

3 3725. Any lien provided for by this chapter shall be en-
4 forced in the same manner as mechanics' liens. Such action
5 shall be filed within one year from the time of the recording
6 of the lien provided for herein.

7 3727. In all cases where judgment may be rendered in
8 favor of any person to enforce a lien under the provisions of
9 this chapter, the leasehold, pipeline, or other property shall
10 be ordered to be sold as in other cases of sales of real estate.

11 3728. Nothing in this chapter shall be construed to impair
12 or affect the right of any person to whom any debt may be
13 due for work performed or materials or services furnished to
14 maintain a personal action against the person liable for such
15 debt.

16 3729. The taking of any note or any additional security
17 by any person given a lien by this chapter shall not constitute
18 a waiver of the lien given by this chapter unless made a waiver
19 by express agreement of the parties in writing. The claiming
20 of a lien under this chapter shall not constitute a waiver of
21 any other right or security held by the claimant unless made
22 a waiver by express agreement of the parties in writing.

23 3730. All claims for liens and likewise all actions to re-
24 cover therefor under this chapter shall be assignable so as to
25 vest in the assignee all rights and remedies herein given subject
26 to all defenses thereto that might be raised if such assignment
27 had not been made.

28 3731. All liens granted by this chapter shall be perfected
29 and enforced in accordance with the provisions hereof whether
30 such liens arise before or after the effective date of this chap-
31 ter; provided, however, that any unperfected lien granted
32 under any statute in effect prior to the effective date of this
33 chapter and which could be subsequently perfected in accord-
34 ance with such prior statute were it not for the existence of this
35 chapter may be perfected and enforced in accordance with the
36 provisions of this chapter if the statement of lien required to
37 be recorded under Section 3723 is recorded within the time
38 therein required or within two months after the effective date
39 of this chapter, whichever period is longer; and provided
40 further, that the validity of any lien perfected prior to the
41 effective date of this chapter in accordance with the require-
42 ments of any statute in effect prior to such effective date shall
43 be determined on the basis of such prior statute but the en-
44 forcement thereof shall insofar as possible be governed by the
45 provisions of this chapter.

46 3732. This chapter shall be given liberal construction in
47 favor of all persons entitled to any lien under it.

This bill, generally referred to as the Oil and Gas Lien Act, was presented to the 1957 Session of the Legislature and at that time referred to the Senate Interim Judiciary Committee for study.

The bill is primarily sponsored by the Petroleum Equipment Suppliers Association, which is composed of more than 300 members representing approximately 95 percent of the industry. There are possibly a couple thousand supply stores in the industry, from the small independent to the multistores distribution company like U.S. Steel or Youngstown. It also includes hundreds of service companies who render specialized services to the oil industry. The legislation is likewise supported in California by the Credit Managers Association of Southern California.

Objections to the legislation were raised by title company representatives as well as the major oil companies and it was determined that full-scale hearings be held to study the subject. The first hearing was held in Los Angeles in January 1958, at which time proponents and opponents presented testimony before the full committee.

In March 1958, the Subcommittee on Real Estate and Probate further considered the bill. Again, in December 1958, the bill was discussed before the full committee at a hearing in Los Angeles. Opponents of the proposal advised the committee that some of their objections had already been resolved and some were still being considered. Committee counsel also advised the committee that the major oil companies still opposed the bill in its present form.

A report of the testimony at the December 1958 meeting is set forth as follows:

A.B. 2920, Oil and Gas Lien Act

MR. BOHN: The next item on the agenda, Mr. Chairman, is the Oil and Gas Lien Act. Mr. McGilvray.

SENATOR GRUNSKY: The Oil and Gas Lien Act, A.B. 2920. Mr. McGilvray.

KENNETH MCGILVRAY: Yes, Mr. Chairman. For the record, I am Kenneth McGilvray. My office is 714 Forum Building, Sacramento. I am an attorney and registered before the Senate to represent the Petroleum Equipment Suppliers Association, which is a body of equipment suppliers throughout the nation. We have certain witnesses who have testified before the committee on January 3d of this year and that record has been written up. All of the senators were present at the hearing except Senator Coombs and Senator Arnold. The record, if they don't have the transcript, would be made available for them. It wasn't my intention, because of the shortness of time, to review and go over the same testimony that was presented in Los Angeles a year ago almost. I have with me all of those gentlemen who were there at that time and they will not be called upon; I just note that they are here. Mr. Mosely of the Oil Wells Supply Company which is a subsidiary of U.S. Steel and Mr. Parham of the Youngstown Steel people; Mr. Burbeck of Republic Supply; Mr. Forsyth of ——— and there is a Mr. Bush here who is the secretary on the coast for the Petroleum Equipment Suppliers and Mr. McMullen, who has been with us before. But we have here two gentlemen from Duncan, Oklahoma, which is a city 60 or 80 miles below Oklahoma City and as I understand it

Duncan, Oklahoma, is one of the largest producing counties of oil. Mr. Enos will lead off for us. He is one of the attorneys for the Halliburton Oil Wells Cementing Corporation, which is worldwide in the service part of the industry, and then also, we have Mr. Clint Roberts, who is the assistant treasurer of Halliburton, who will speak also on it.

What we would like to do is, having gone over the transcript again, was to impress upon the committee the need of industry for this type of bill in California and the economic effect of the bill on your constituents in your counties because California is a great oil producing state. The limitations of the present Mechanics' Lien Law are such that they do not have the same advantages in California as they have in several other states and Mr. Enos is well qualified to talk on that, because his company is dealing and doing business of great magnitude in all these other states which have this type of lien law and can discuss it with the committee. I am going to ask then, Mr. Enos, an attorney, of Duncan, Oklahoma, to speak to the committee on those subjects.

SENATOR GRUNSKY: Just a moment, gentlemen, before you do. Mr. Bohn, for the benefit of the members of the committee, can you straighten us out as to where we stand on this and as to what we may hope to accomplish today. Can we approach this for a decision today?

MR. BOHN: I think not, Mr. Chairman. This bill was before the committee in 1957 and was referred to the interim committee for further study. Since that time there has been a hearing on this bill in some detail in Los Angeles and in both cases there was substantial opposition indicated to the bill. However, the purpose of putting it on the agenda today was to report to the committee the present state of affairs, how far they have gotten and any additional information that may have occurred. Although there have been the usual notices sent out, I don't know whether any of the opposition are present. The title companies are here in opposition to the bill and I understand also that some of the oil companies are in opposition as well.

SENATOR GRUNSKY: Then that means you are not going to be able to reach a decision today because though we have a number of our committee members here we don't have enough to take decisive action which would demonstrate the outcome in the event the same members were holding in the session, so what I want to do is preclude a lengthy hearing because otherwise we will hear it now and we will hear it all over again presumably within 90 days, which we want to avoid.

SENATOR FARR: Mr. Chairman, I would like to ask Mr. McGilvray if these men came out simply to testify.

SENATOR GRUNSKY: Yes, we are going to hear from them, don't misunderstand me, but I want the opposition and everyone to understand; we do not want to get into a two-hour discussion on the merits and then take no vote or any action and we are going to have to hear it again in the session. I think though that we can possibly determine this and then we will hear from these witnesses. Mr. McGilvray, do you have the language of your bill now; are you willing to stand and fall on—

MR. MCGILVRAY: Well, we have some very definite amendments. We spent yesterday with Mr. Howlett at the title company and we will propose them. I wasn't going into them now. For instance, one of the oil companies has several things they wanted done. They feel

that the bill shouldn't be in the Natural Resources Code, but should be in general law on Mechanics' Liens and I think I agree with them. That is purely technical and we can put that in.

SENATOR GRUNSKY: Well, then, we are not even ready at this time to get the—

MR. MCGILVRAY: No and there are several other things that we want to clear up and from a matter of technical—those will be proposed to the title people so that they can act on them probably this month at their legislative committee hearing. Another thing that one of the oil companies want is that it does not apply to pipelines or public utilities. We are perfectly agreeable to that and then also, they don't want it to run more than six months, but that we feel is in the bill now.

SENATOR DOLWIG: Mr. Chairman, don't you think it would be well for the committee to have the benefit of their amendments as part of the committee record?

SENATOR GRUNSKY: That is right. Well, that is what I am going to ask. As a point of order, I am going to make an order, with the approval of the committee, that we're not going to attempt to resolve this issue at this time unless the opposition feels that they are in some way prejudiced. We will not have a hearing, but will hear the testimony of these two witnesses by reason of their courtesy in coming this far to testify. We will have their ideas in the record, but we will take no vote or action on this matter at this time. We will not have an adversary hearing and proceeding here; this will simply be for the purpose of the limited testimony of these men and then with the understanding that Mr. McGilvray will submit to Mr. Bohn as soon as possible the best draft of your bill, which presumably will be introduced at the next session, including whatever amendments you work out.

MR. MCGILVRAY: We will try to have the bill in final form as soon as the title people have gone over it and everything worked out so that it will not have to have successive amendments.

SENATOR GRUNSKY: All right, without further delay, will you have your witnesses proceed?

MR. MCGILVRAY: Mr. Enos, please.

MR. ENOS: As Mr. McGilvray said, I am appearing here today in behalf of the Petroleum and Equipment Suppliers Association. That is an association of supply houses, supply stores and manufacturers as well as service companies who service the oil producing companies and the developers. That association has approximately 300 to 350 members representing perhaps 90 or 95 percent of the industry who supply and service the oil industry. There are possibly a couple of thousand supply stores in the industry, from the small independent in one particular area to the multi-stores distribution company like U.S. Steel or Youngstown. In addition, there are some hundreds of service companies who render specialized services to the oil industry. The association represents both these supply and service companies. Individually I am employed as an attorney for Halliburton Oil and Cementing Company, the largest of the service companies. That particular company operates in every oil field in the world. It has some 8,500 employees and 9,000 vehicles of all types.

As far as the industry is concerned, the supply companies furnish to the oil field operator, the leasehold developer or owner, everything he needs in the way of drilling, digging and completing an oil well, from the small items of the drill bits, pipe that go in the hole, to the technical and highly developed expensive drilling rigs now in use. While the service companies offer specialized services, which he needs in drilling and completing the well and principally those are cementing, which is required for practical purposes and by the conservation laws of all these states, cementing the protective or surface casing, cementing of the production or long string as it is called, testing services by which the operator is enabled to test the formation and the zone into which he is to drill; perforating, which is a service by which holes are perforated into the casing and the cement sheath around it into the hope-to-be producing formation. Acidizing and fracturing are the other two largest services, together with special tools that might be required in any one of these services or in production itself, testing tools, specialized cementing tools, fracturing tools and acidizing tools such as that.

Now, of course, it is true that any developer of an oil and gas lease could necessarily furnish these services for himself, but as in any other field, the experience of trained and experienced personnel becomes of importance and the specialized equipment that is best capable of performing these jobs is such that service companies can do it for him more economically than he can do it for himself, particularly in view of the fact that the majority of leases are developed by independents, small men who develop one lease at a time rather than the major oil companies themselves. As a matter of fact, statistics would indicate that approximately 35 percent of the leases are developed by the so-called major oil companies while 65 percent are developed by independents.

These sales and services, over the course of a year would amount to perhaps a billion and a quarter dollars, a billion two hundred fifty million dollars in sales of supplies and services to the oil industry all over the United States. Roughly, California accounts for perhaps three hundred million dollars of that. You can see that credit plays a large part in this field. Without it the necessary development could not take place and as I indicated, 65 percent of the development is by an independent. An undeveloped oil and gas lease, an undrilled oil well is not bankable. The owner or the operator of that lease cannot get a bank loan to finance his operations. Of course, if he has credit or other collateral that is another proposition, but the individual lease which is undeveloped is not a bankable piece of security so he must look for his financing or support elsewhere.

The service and supplies companies, because of their experience, their knowledge of the operator, their knowledge of his own lease and the information which is available to him and their experience in the field are willing to extend to him credit for the necessary supplies and service which he will need in the development of that lease. Of course, it isn't strictly a gamble; all the wells he drills are not dry holes; they're not wildcats, I mean; they're what the men in the field may call proven locations. Of course, there is no such thing as a sure producer, but they are not strictly wildcats, but nevertheless they are not bankable as such, so the service and supply companies have to extend him

the necessary credit before that lease can be developed. And of course, so far as the economy of the State is concerned, the economy of the country, the production of petroleum itself, the development of that lease is absolutely essential. The owner of the land who is entitled to receive the owner's royalty reserved to him, whatever that may be, one-eighth, one-sixth, one-seventh, is anxious to see the lease developed. He cannot profit from that ownership, that interest unless the lease is developed and that plays an important part in the economy, particularly in California.

Now what types of security are available to the service and supply industry for extending this credit? Of course, some of the materials that are sold to the leasehold or operator may be recoverable. Recognized and existing types of security instruments may be taken, chattel mortgages or conditional sales contracts. However, a very large portion, far in excess of half of the materials furnished are expended, not recoverable, even as large an item as pipe which is used to case the hole several thousand feet, two to three and a half foot, is never entirely recoverable, sometimes part of it may be recoverable, but never all of it. And, of course, the services rendered by the specialized service companies are in the nature of labor performed and the use of expensive equipment and the materials that went into the particular service and those, of course, are intangibles for which no tangible type of security may be taken.

So early in the development of the oil industry in the United States mechanics' and materialmen liens were found to be an effective means of securing those which provided supplies and services to the industry for several reasons, one of them being that it was an equitable type of security. It was equitable to the operator because it permitted him to develop his lease and to secure those who furnished him. It was equitable to all those who furnished because no one of them was permitted any preference over another. Of course, it is true that any one supply or service company can go to the operator and take one of these security instruments, a chattel mortgage or even a deed of trust or mortgage on his leasehold, but by so doing he may obtain a priority over the others who are just as essential in the development of the leasehold and the race then is to the swift.

The industry has found that it isn't desirable, even in the industry as among themselves, to attempt to retain any preference as among themselves. Of course, if we're there first today with a deed of trust we may be protected on an individual account, but tomorrow we may be the last man and thus left out. So generally the industry does not play for that type of preferential security. The mechanics' and materialmen liens afford an equal treatment to all those who service and supply the developer.

Of the 30-odd oil-producing states in the Union 16 have special statutory provisions relating to liens for services, supplies and labor furnished to oil and gas leases. In most of the other states provision of the general mechanic's and materialman's lien statutes have been held applicable, to a more or less extent, to the development of oil and gas leases or oil and gas wells. California is the only major oil producing state which has no adequate lien provisions relating to oil and gas leases.

The section of the California code granting a lien to mining claims, and your general mechanic's and materialman's lien statutes are because of their language and judicial construction, virtually inapplicable to the petroleum industry. These limitations, such as the terms not being applicable to an oil and gas lease, what is meant by an improvement, limitation on the "convenient space" about the improvement in relation on an oil and gas lease, what furnishings in the nature of supplies, equipment or services are lienable, the time within which claim for lien must be filed and foreclosed are the subjects of a memorandum which has already been presented to you and which was prepared by Mr. John Griffin, of our committee.

I will not take time to discuss those points further today. I will mention only one of them. When is an oil or gas well completed as that term is used in your present lien statute? Under your statute, if the owner files his notice of completion the contractor has 60 days within which to file his lien and the subcontractor has only 30 days. If he does not file a notice of completion then they both have 90 days from completion of the improvement, whatever that means, in which to file their claims for lien. I have already mentioned the peculiar terms of credit existing in the petroleum, equipment and service industries.

Most invoices for services or supplies are not even due or payable until the 20th of the month following the month in which delivered. They are not considered past due until they are 60 to 90 days old. Suppose we render a service to your lease on December 1. You would be invoiced immediately and that account would be payable immediately but not due until the 20th of January. That's a period of 50 or 51 days. If we were going to claim a lien we would be forced to file it within 60 days of the date of the invoice, but we do not even consider the account past due until that period has elapsed. Because of the longer terms of credit obtaining in the petroleum, equipment and service industries we feel in fairness to the operator and the industry a longer period of time should be permitted in which to perfect and claim a lien.

It had been suggested, I believe, that if the time for filing liens were extended it might result in an increase in the number of liens filed, actually it won't. In Texas the filing period was extended and the experience has been that the number of liens filed was reduced for the reason that service and supply companies know that they are secured within the period of time the leasehold operator or developer is enabled to bring his well on production and establish its economic value within that period of time, six months, and is able to demonstrate the justification for credit, the collectability of the account, in other words, or to refinance it to gain recognized, commercial financing for his venture before that time has expired. So as a matter of practice the service companies and the supply companies do not have to resort to liens because of those factors. Then too, the time within which foreclosure should be commenced, we find to be most satisfactory in all states at about one year. That's the period in most of the states, some have as long as two years, but those are the exception. That also gives the operator a time to develop his lease if he has encountered unusual circumstances which make it essential for us to protect ourselves by the filing of liens.

We don't like to rush and institute foreclosure proceedings. Under the present statute in California if we don't foreclose within 90 days then we lose our right to a lien. Actually, we like to give the operator that necessary period of time in which to complete his development or work out commercial financing. In some instances it might be advantageous to institute foreclosure proceedings and let them pend. Under your practice I think that is impossible and I think it's very good procedure that all cases on file must be disposed of right away.

So there again the service and supply companies don't resort either to the lien or to the foreclosure because we feel that the period is inadequate insofar as the operator is concerned. Generally speaking, those are the experiences and the reasons why we feel that it would be beneficial to the development of the oil and gas industry in general and it would permit the service and supply companies to secure themselves and extend credit in many instances in which they are not now able to. As a matter of fact they are experiencing, as Mr. Roberts will point out, they are experiencing difficulties in many instances. In some instances, as I said, we are not able to extend credit to operators who are really justified because we feel that we would not be adequately secured. Any other questions you would like answered I would be glad to.

SENATOR GRUNSKY: Well, thank you, I think much of this is informative and summarizes material that already has been submitted to the committee, but we appreciate having your views on it. Do you have anything, Mr. Bohn?

MR. BOHN: Just one or two questions, if I may. I think your explanation is most clear, I want to understand though, you spoke in terms of your time problems in the event of using the standard lien procedure and I think you have clearly set forth the problem you have there. As I recall this bill it goes considerably further than extending time, in this particular bill there are methods of pursuing and that sort of thing.

MR. ENOS: Yes, that is true.

MR. BOHN: Do you feel that you would be given substantial relief from your problem if the extension of time was granted in some fashion or another without the second step?

MR. ENOS: Well, that would be some relief, Mr. Bohn, but not adequate. The extension of the lien to the proceeds of production is not new. It has been part of the lien laws of at least six states for some period of time. It has been part of the lien law of Illinois since 1919. No one in the producing field, the oil companies or the developers find that that is a burden at all and as a matter of fact a leasehold estate which constitutes the service or supply company's principal security in these instances is a wasting asset. It is the type of security that has value only as it is produced, that is the immediate cash value of an oil and gas lease. It affords the operator to immediately pay out, it affords the service or supply company some degree of protection against other types of defeat such as an intervening assignment or an attachment or a writ of garnishment or anything that might be the result of a judgment lien and yet it would afford all those who had supplied to that lease in its development equal protection, no one gaining any priority over the other by having first reduced his account to judgment

and secured a writ of garnishment. We don't like to have to resort to that.

SENATOR GRUNSKY: Mr. McGilvray, does this other gentleman have something he wants to add?

MR. MCGILVRAY: Yes, he has. Mr. Roberts is the treasurer of Halliburton who came out also with Mr. Enos. He has been with the oil company a great number of years and has had experience in the Texas and in the great midwest fields. Mr. Roberts, would you make a statement?

SENATOR GRUNSKY: Incidentally, Mr. Roberts, we have had considerable hearing on this and have a great deal of background, so I think you can start with the basic premise that we are familiar with the fundamentals of your problem, but we would appreciate your particular application to it.

MR. ROBERTS: Briefly, for 25 years I have been credit manager for the company. We find that your development of oil fields is all based on credit. We work with the small operators, 65 percent of your operations, your drilling, your——income, suppliers and service companies are from your independent companies. We have the East, to give you a very definite idea, the East Texas field was developed simply on credit, there wasn't any money. There were thousands of wells drilled in the East Texas field because we had a lien law that if we could not pay they would come in and tell us, it was understood we would make arrangements where we would file a lien on our leasehold estate and we would set there and if it paid out or if you will set there eight or ten months why we will have enough income from it, we can go borrow enough money and pay you. With those arrangements there were thousands of wells drilled, we did not lose any money, the supply companies didn't.

If you are following your oil and gas industry in California you will note since the first of the year that California has taken a terrific nosedive in actual operations and actual drilling. I wouldn't say this is your major reason, but one of your prime reasons your independents are finding more difficulty in financing at the bank. Your banks are looking at longer payouts, they're looking at more difficult problems and more attractive loans some place else and the independents are being by-passed, so the service companies, supply companies and the people who are furnishing are carrying that load.

The development of your oil and gas resources brings income to the people themselves, the people who own the fees from their royalties. We've never tried to bother or attach the landowner's interest, we do not want to molest his interest, it's always the lease owner's interest, because it is he that you are working on. We feel that as a credit manager for Halliburton that we would be able to extend more liberal terms and do a lot more work with your independents in the State of California if we had a law for your mechanics' liens that would be comparable with all the other oil producing states which we are operating in. We don't file many liens, but we have that security so that we know that if he can't over a period of six months do his own financing we do have a means of securing our accounts.

SENATOR GRUNSKY: I might ask how long have you had the law which you are operating under?

MR. ROBERTS: In Oklahoma?

SENATOR GRUNSKY: Yes, and you mentioned Texas.

MR. ROBERTS: Oh, since 1905 in Oklahoma.

SENATOR GRUNSKY: And has there been any controversy over it or proposed amendments?

MR. ENOS: Yes, but they are minor, they do not go to the major aspects at all.

SENATOR GRUNSKY: Do you have any problems with your title companies?

MR. ENOS: No sir, none whatsoever.

SENATOR GRUNSKY: And you only shoot for the leasehold interest?

MR. ROBERTS: That is right. This is something else, in all your pipelines and your major companies they impound millions of dollars all the time in titles that are not pure. This is not going to us, I do not think we are going to have any trouble at all with the major companies. Some of the boys have talked with them and I don't see why it would be adverse to any major companies because they pay their bills. It is your independents that need help, that we are trying to protect.

SENATOR GRUNSKY: Mr. McGilvray, are we talking about the same bill now? All your bill proposes and all your people are asking is the lien on the leasehold interest?

MR. MCGILVRAY: Yes sir, and there was some conversation about the great number of community leases if you read the paper this morning, out here at one of the movie lots they're drilling on the side to get a permit, but they get community leases all around, maybe 2,000 homes could be involved and would share in it. If it isn't in the language now to the satisfaction of the title companies, in the technical amendments it will be taken care of so that there is no possibility that any one of those 2,000 homeowners could have his lease affected or his rights affected.

SENATOR GRUNSKY: And you don't have anything substantial in your proposed draft different from what these men say they have been working successfully under for years?

MR. MCGILVRAY: No sir.

SENATOR GRUNSKY: All right.

SENATOR REGAN: What happened to the bill last time? It seems to me I raised some questions and I can't recall what they were.

MR. MCGILVRAY: In our testimony and before you Senator Regan, on the third of January, those were set out fairly well, but we think we have met those objections that you made. They are in the record in the transcript.

SENATOR GRUNSKY: All right now, in order to hurry along here, this is not to be a controversial hearing, simply one to record and get the benefit of your general testimony. We appreciate your coming this distance to give us the benefit of it. So it is understood then you are going to get us this agreed amended draft and so advise us if it is agreed to and who has agreed to it and then the matter will —presumably you will have your authors and introduce the bill, this

won't be a committee bill, then when it is set for hearing you'll get the full treatment by the Standing Committee in the regular session.

MR. MCGILVRAY: I would like to call to the attention of the committee the rather long memorandum that was furnished by Mr. Griffin on this whole bill. It would be of some aid to the committee in going over it and then the transcript and then also I will mail rather than burden you with taking them home, some certain information on the industry itself. I will mail it to each Senator's office.

SENATOR GRUNSKY: What we want also is that Mr. Bohn has the information so that as counsel for the Standing Committee when the bill is called up he can give us the history and all and do it concisely and to the point in order to get it before us as quickly and as briefly as possible during the regular hearing.

SENATOR DOLWIG: Mr. Chairman, one question we should be prepared for and that is on the overall mechanics' lien problem that we now have under study. One of the criticisms of the building industry is that a portion of the building industry is using the mechanics' lien as a credit crutch. It seems to me that perhaps that is what this industry is in effect saying, that we can extend more credit if we have a tighter lien law. Just a matter that you might be prepared for in your presentation before the Main Committee. I do not think we want to go into it now.

SENATOR GRUNSKY: No. Thank you very much, gentlemen.

MR. BOHN: Mr. Chairman, may I at this time, without going into the details of the bill, ask the title company representatives to step forward to note his opposition so that the record will be clear.

SENATOR GRUNSKY: Yes, but please do not go into the merits or the substance of your opposition, just note it for the record.

MR. MATTHEWS: Chairman and gentlemen of the committee, my name is Hazen Matthews, I am the Legislative Advocate for the title companies. You've heard something about the bill; we're on record as being opposed to it; some of our objections have already been resolved; some are being considered. At this point we have no intention of putting our case. I have with me Mr. Richard Howlett, Vice President and Senior Counsel of the Title Insurance and Trust Company, if you have any questions for him.

SENATOR GRUNSKY: No, I would rather, as a point of order, say that we won't go into that, but we will contemplate hearing from you at length in the regular hearing during the session when the bill is on the calendar.

MR. MATTHEWS: Thank you sir.

SENATOR GRUNSKY: Thank you sir.

MR. BOHN: May the record also note that Mr. Al Shults called me on the matter and his group is also opposed to this bill in its present form.

SENATOR GRUNSKY: Which group is that?

MR. BOHN: The major oil companies.

The committee made no recommendation on this bill because the proponents and opponents had not resolved their differences and it was anticipated that this would be done prior to the 1959 Session.

Subsequent Action Taken

During the 1959 Session, Senate Bill 234, relating to this subject, was introduced and is included in the 1959 Report of the Standing Judiciary Committee (Part II of this report).

8. PUBLIC UTILITIES

| <i>Bill Number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| S.B. 2191 ----- | 1706 | Am |

SENATE BILL 2191 (1957 Session)

An act to amend Section 1706 of the Public Utilities Code, relating to public utilities and other regulated businesses and matters incidental thereto.

This bill provided that in all proceedings before the Public Utilities Commission or any commissioner thereof that reporters be assigned from the staff of the Division of Administrative Procedure in the same manner as they are assigned to other agencies, instead of being appointed by the commission.

After brief consideration by the committee in May 1958 it was determined that circumstances leading to introduction of the bill had been resolved and no further action was taken.

9. REVENUE AND TAXATION CODE

| <i>Bill Number</i> | <i>Section</i> | <i>Effect</i> |
|--------------------|----------------|---------------|
| ----- | 2192.1 | Ad |

Relative Priority of Liens Arising From Federal Taxes, Local Taxes or Assessments and Private Contract

This proposal was submitted to the interim committee by the California Bankers Association to correct the effect of a recent federal decision.

The proposal is as follows:

An act to add Section 2192.1 to the Revenue and Taxation Code, relating to real estate tax liens.

The people of the State of California do enact as follows:

SECTION 1. Section 2192.1 is added to the Revenue and Taxation Code, to read: 2192.1. Every tax declared in this chapter to be a lien on real property, and every public improvement assessment declared by law to be a lien on real property, has priority over all other liens on the real property, regardless of the time of their creation, except as otherwise provided by law, provided that if the lien of said taxes and assessments is subordinate to a lien of the United States on said property, which lien of the United States is in turn subordinate to any lien to which the lien of said taxes and assessments is prior by virtue of this section, then any sum available for distribution in satisfaction of said liens upon a sale of the property shall be distributed as follows:

(1) There shall be paid to the United States that portion of the fund to which it is entitled under the laws of the United States;

(2) There shall be paid with respect to the lien for said taxes and assessments the amount which would have been available on account thereof had no other liens existed except that of the United States;

(3) The balance shall be paid on account of the other liens on the basis of their relative priorities as amongst themselves.

The proposal was considered by the full committee at a hearing on December 4, 1958, and reported as follows.

Proponents submitted the following explanation:

A recent federal appellate court decision declared that because the state statute creating the real estate tax lien did not expressly make it

prior to pre-existing liens, it would not enjoy such priority (see *Jefferson Standard Life Insurance Company v. United States*, 247 F. 2d 777, CBA Bulletin 3, Series 23).

This statement of the law is rather surprising considering that the title which comes out of a tax sale is free of all encumbrances (Revenue and Taxation Code 3712).

Because a tax sale cuts off encumbrances, banks frequently advance monies to prevent taxes from going delinquent.

Now, however, under this holding the Director of Internal Revenue may assert that an advance for county taxes made by the holder of a prior deed of trust is not superior to the deed of trust. Also, the priority of such advances may be challenged by a trustee in bankruptcy of the borrower.

It is believed that the following addition to the Revenue and Taxation Code would restore what was previously understood to be the law.

Mr. Phil Gregory, appearing on behalf of the California Bankers Association, testified as follows:

MR. GREGORY: The genesis of the proposal is this, a recent federal court declared that because the state statute creating our property tax lien did not expressly say that it was prior and paramount to all other liens regardless of the time of their creation that it would not be prior. This caused quite a furor actually and is contrary to all previous understanding on the subject. In conformity with this understanding that a tax lien was superior to a private lien regardless of the time of their respective creation or attachment, lenders, for example, followed the widespread practice of making sure that tax bills do not go delinquent. Now, however, this beneficial practice may no longer be possible.

For example, you may have a federal tax lien which would attach to the particular property in question. The federal tax collector could say, "Well, the payment by the lender to clear these taxes was optional," and it would not be accorded any recognition, for example, in a bankruptcy proceeding. It is a rather complicated subject and it is difficult to summarize it too fully because there are a large number of federal cases on the subject. It would have been easy to put in a simple bill saying that "local tax liens are superior to private tax liens regardless of the time of their creation" and, as a matter of fact, we thought eventually to do this. However, this is not possible because of a theory which is termed the security of priorities.

To begin with, I should mention there is a federal statute which says that the federal tax lien is not superior to any private lien if the private lien attaches before the filing of the federal tax lien. In other words, that recognizes the priority of the private tax lien such as under a deed of trust if it attached before the federal tax lien. However, if you had three liens, the local tax lien, the federal tax lien and a private lien, you have a very difficult situation where your local tax lien is inferior to the federal tax lien. You can see that you have a circle and it just depends where you come in and if you simply reverse this Jefferson case, and I have cited in the memorandum which was given to you, if you simply try to reverse that case the federal tax authorities could come in and say, "Well, if you say that the private lien under your deed of trust is inferior to the local tax lien then that means that the

federal tax lien will be superior to both," which, of course, is not true under the present law.

So, we have followed the provisions which you have before you now which, in essence, does this, it simply states in point (1) that the federal tax lien will enjoy the priority that it does enjoy under federal law. That is nothing that we can do anything about on a state level, that is a matter of federal law. And then secondly, we make express that the standing of the local tax lien would be the same with respect to any proceeds of sale available as if there had been no private lien involved. That is very important, because that eliminates a little problem called trading in on the priority of a private lien and I think this is a satisfactory solution from the local tax standpoint because it attempts to guarantee the local tax authority on a sale what they should have at present. And then third, of course, all your other private liens are ranked according to their priorities as between them.

I feel that this may be a subject in which further consideration may be required. I don't know. We have tried to contact interested parties. We have contacted the County Supervisors Association and the League of California Cities. I have written to the state taxing authorities and so on, without exception. I believe we have received expressions of encouragement in attempting to resolve what is a rather vexing problem raised by the Jefferson case. I think that would about summarize the situation.

The committee acknowledged that the technical nature of the proposal required careful consideration and although they understood its purpose they preferred to withhold final approval until later so that full notice could be given to the public. The proponents agreed that this was the proper disposition and they, too, were anxious to obtain as wide a reaction as possible.

It was thereupon recommended that the proposal be given publicity and as many interested groups as possible be notified prior to the 1959 Session.

NOTE: During the 1959 Session Senate Bill No. 567 was introduced on this subject and is included in the 1959 report of the Standing Judiciary Committee.

**IV. REPORT ON JUDICIARY ACTIONS
TAKEN AT 1959 LEGISLATIVE
SESSION**

A. INTRODUCTION

The following is a summary of actions taken on bills referred to the Senate Committee on Judiciary during the 1959 Regular Session of the Legislature:

SENATE BILLS

240 Senate bills, including Senate constitutional amendments, Senate concurrent resolutions, and Senate joint resolutions, were referred to the Senate Committee on Judiciary.

Of this number:

159 were given a "do pass" or "do pass, as amended" recommendation.

Of these:

125 were chaptered.

1 was refused passage by the Senate.

8 remained in the Assembly committee to which they had been assigned.

1 remained in the Assembly Committee on Rules.

14 were pocket vetoed by the Governor.

2 were vetoed by the Governor, with the veto sustained.

4 were referred for interim study by the Assembly Committee on Judiciary—Civil.

1 was referred for interim study by the Assembly Committee on Judiciary—Civil Procedure.

1 was referred for interim study by the Assembly Committee on Rules.

2 were referred for interim study by the Senate.

34 were rereferred to the Senate Committee on Rules for assignment to an interim committee for study.

4 were withdrawn by the Senate Committee on Rules for rereferral to another standing committee of the Senate.

1 was rereferred to the Senate Committee on Rules, without recommendation, for reassignment to another standing committee of the Senate.

42 remained in the Senate Committee on Judiciary. (This number includes bills which were heard by the committee for purposes of amendment, but were not subsequently requested a hearing by the author, bills which were refused passage by the committee, and bills subsequently dropped by the author.)

ASSEMBLY BILLS

245 Assembly bills, including Assembly constitutional amendments, Assembly concurrent resolutions, and Assembly joint resolutions, were referred to the Senate Committee on Judiciary.

Of this number:

220 were given a "do pass" or "do pass, as amended" recommendation.

Of these:

208 were chaptered.

1 was refused passage by the Senate.

1 was stricken from the Senate File.

1 remained on the Inactive File of the Senate.

8 were pocket vetoed by the Governor.

1 was vetoed by the Governor, with the veto sustained.

11 were rereferred to the Senate Committee on Rules for assignment to an interim committee for study.

14 remained in the Senate Committee on Judiciary. (This number includes bills which were heard by the committee for purposes of amendment, but were not subsequently requested a hearing by the author, bills which were refused passage by the committee, and bills subsequently dropped by the author.)

**TOTAL BILLS REFERRED TO THE SENATE COMMITTEE
ON JUDICIARY—1959 SESSION**

| | <i>Senate bills</i> | <i>Assembly bills</i> |
|---|---------------------|-----------------------|
| Bills given a "do pass" or "do pass, as amended" | | |
| recommendation | 159 | 220 |
| Bills recommended for interim study | 34 | 11 |
| Bills remaining in committee | 44 | 14 |
| Bills rereferred to another standing committee of the Senate | 3 | -- |
| | <hr/> 240 | <hr/> 245 |
| Senate bills introduced | | 1,489 |
| Senate constitutional amendments | | 31 |
| Senate concurrent resolutions | | 94 |
| Senate joint resolutions | | 30 |
| Senate resolutions | | 190 |
| Senate bills approved by the Governor | | 793 |
| Senate bills pocket vetoed by Governor | | 72 |
| Senate bills vetoed by Governor | | 9 |
| Senate bills veto overridden by Senate | | 1 |
| Assembly bills introduced | | 2,912 |
| Assembly constitutional amendments | | 56 |
| Assembly concurrent resolutions | | 151 |
| Assembly joint resolutions | | 42 |
| Assembly resolutions | | 434 |
| Assembly bills approved by Governor | | 1,402 |
| Assembly bills pocket vetoed by Governor | | 67 |
| Assembly bills vetoed by Governor | | 20 |

MEASURES CONSIDERED BY THE SENATE COMMITTEE ON JUDICIARY—1959 SESSION
Bills Receiving a "Do Pass" or "Do Pass, as Amended" Recommendation by the Senate Committee on Judiciary

| Code | Senate bills | Assembly bills | Chaptered | | Pocket-vetoed | | Vetoed | | Other action | | |
|--------------------------------|--------------|----------------|--------------|----------------|---------------|----------------|--------------|----------------|--------------|----------------|---|
| | | | Senate bills | Assembly bills | Senate bills | Assembly bills | Senate bills | Assembly bills | Senate bills | Assembly bills | |
| Agriculture..... | 2 | 3 | 2 | 3 | | | | | 1 | | No action Assembly committee Refused passage by Senate Stricken from Senate File |
| Business and Professions..... | 1 | 4 | 13 | 4 | | | | | 1 | | |
| Civil..... | 15 | | | | | | | | | | |
| | | 22 | | 20 | | | | | | | No action Assembly committee Stricken from Senate File Passage refused by Senate No action Assembly committee No action by Assembly |
| Civil Procedure..... | 40 | 35 | 34 | 34 | 3 | 1 | | | 3 | | |
| Corporations..... | 5 | 5 | 3 | 5 | 1 | | | | 1 | | |
| Education..... | 2 | 3 | 2 | 3 | | | | | | | Inactive File of the Senate No action Assembly committee Vetoed—sustained |
| Financial..... | 1 | 3 | | 1 | | | | | | | |
| Fish and Game..... | 3 | 3 | 1 | 3 | | | | | | | |
| Government..... | 17 | 46 | 14 | 45 | 3 | 1 | | | 1 | | Vetoed—sustained |
| Health and Safety..... | 4 | 8 | 3 | 7 | | | | | | | |
| Insurance..... | 2 | 1 | 1 | 1 | | | | | | | |
| Labor..... | 1 | 5 | 1 | 5 | | | | | | | Vetoed—sustained |
| Military and Veterans..... | 1 | 1 | 1 | 1 | | | | | | | |
| Penal..... | 1 | 1 | 1 | 1 | | | | | | | |
| Probate..... | 29 | 35 | 26 | 28 | 2 | 6 | 1 | 1 | | | No action Assembly committee No action Assembly committee |
| Public Resources..... | 7 | 16 | 7 | 16 | | | | | | | |
| Public Utilities..... | 1 | 2 | 2 | 2 | | | | | | | |
| Revenue and Taxation..... | 2 | 2 | 1 | 2 | | | | | | | No action Assembly committee |
| Streets and Highways..... | 1 | 2 | | 2 | 1 | | | | 1 | | |
| Vehicle..... | 2 | 3 | | 2 | 1 | | | | | | |
| Water..... | 3 | 3 | | 3 | | | | | | | No action Assembly committee |
| Welfare and Institutions..... | 12 | 10 | 8 | 10 | 3 | | | | 1 | | |
| Miscellaneous statutes..... | 2 | 4 | 2 | 4 | | | | | | | |
| Constitutional amendments..... | 2 | 2 | 2 | 2 | | | | | 1 | | No action Assembly committee Passage refused by Senate Stricken from Senate File No action by Assembly Inactive File Senate |
| Concurrent resolutions..... | 2 | 2 | 1 | 2 | | | | | | | |
| Joint resolutions..... | 2 | 2 | | 2 | | | | | | | |
| | 151 | 220 | 125 | 208 | 14 | 8 | 2 | 1 | 8 | | |
| | | | | | | | | | 10 | 3 | |

**MEASURES CONSIDERED BY SENATE COMMITTEE ON JUDICIARY
AND RECOMMENDED FOR REFERRAL FOR INTERIM
STUDY—1959 SESSION**

| Code | Senate bills | Assembly bills | Referred and recommended for interim study by: | | Others |
|--------------------------------|--------------|----------------|--|------------------------------------|----------------------------------|
| | | | Com- mittee on Judiciary | Assembly Committee on Judiciary | |
| Business and Professions..... | 4 | 2 | 2 | | |
| Civil..... | 14 | 2 | 3 | 1—Civil | 1—Senate |
| Code of Civil Procedure..... | 1 | | 12 | 3—Civil | |
| Fish and Game..... | 1 | | 1 | | |
| Government..... | 1 | 3 | 4 | | |
| Health and Safety..... | 2 | | 1 | 1—Civil Procedure | |
| Labor..... | 1 | | 1 | | |
| Penal..... | 11 | 4 | 15 | | |
| Probate..... | 1 | | 1 | | |
| Streets and Highways..... | 2 | | 2 | | |
| Vehicle..... | 1 | | | | 1—Senate |
| Welfare and Institutions..... | 1 | | 1 | | |
| Constitutional Amendments..... | 3 | | 2 | | 1—Assembly Committee on Rules |
| | 42 | 11 | 45 | 5 | 3 |

Recapitulation

| | |
|---|----|
| Bills referred for interim study by Senate Committee on Judiciary | |
| Senate bills | 34 |
| Assembly bills | 11 |
| | 45 |
| Bills given a "do pass" or "do pass, as amended" recommendation by Senate Committee on Judiciary, but recommended for interim study by another body of the Legislature..... | 8 |
| | 53 |

**MEASURES WHICH REMAINED IN THE SENATE COMMITTEE ON
JUDICIARY OR WHICH WERE REREFERRED TO ANOTHER
STANDING COMMITTEE OF THE SENATE**

Consideration was given to some of these measures by the Senate Committee on Judiciary and were returned to the committee while other measures remained in the committee at the request of the author

| Code | Senate bills | Assembly bills | Rereferred to another committee | |
|-----------------------------------|--------------|----------------|---------------------------------|----------------|
| | | | Senate bills | Assembly bills |
| Business and Professions..... | 1 | | 1 | |
| Civil..... | 5 | 1 | | |
| Code of Civil Procedure..... | 7 | 3 | | |
| Corporations..... | 1 | 2 | | |
| Government..... | 4 | 1 | | |
| Labor..... | 1 | 1 | | |
| Penal..... | 11 | 1 | 1 | |
| Probate..... | 3 | 5 | | |
| Public Utilities..... | 1 | | 1 | |
| Vehicle..... | 3 | | | |
| Streets and Highways..... | | 1 | 1 | |
| Welfare and Institutions..... | 2 | | | |
| Constitutional amendment..... | 1 | | | |
| Senate concurrent resolution..... | 1 | | | |
| Senate joint resolution..... | 1 | | | |
| | 42 | 14 | 3 | |

B. AGRICULTURAL CODE

SENATE BILL 641 (Byrne)

An act to amend Section 86 of the Agricultural Code, relating to district agricultural associations.

Amended in the Senate April 8, 1959.

Amended in the Senate May 14, 1959.

This bill was introduced at the request of the Department of Finance.

Committee counsel offered the following comments on the bill as amended May 14th:

Makes it clear that claims against district agricultural associations must be handled as claims against the State and must be presented to the State Board of Control. The Department of Finance, which requested the bill, stated this had been the original concept of the law, but by recent court decisions it had been held that these associations are in the nature of independent districts for claims purposes. The result of this decision has been to confuse claims procedures against county fairs.

(This bill was tied into AB 406 (Chapter 1715), the general claims bill.)

CHAPTER 1000

ASSEMBLY BILL 858 (Biddick)

An act to amend and renumber Section 96 (as added by Chapter 1471, Statutes of 1957) of the Agricultural Code, relating to insurance for horserace meetings.

Committee counsel offered the following comments on the bill as introduced:

Makes no substantive change.

CHAPTER 622

SENATE BILL 244 (Byrne)

An act to add Section 160.10 to, and to repeal Section 160.96 of, the Agricultural Code, relating to pest control.

Amended in Senate February 26, 1959.

An act to add ~~Section 160.10 to~~ ARTICLE 3 (COMMENCING AT SECTION 160.97) TO CHAPTER 1A OF DIVISION 2 OF, and to repeal Section 160.96 of, the Agricultural Code, relating to pest control.

Committee counsel offered the following comments on the bill as amended:

Provides a reporting system for crop damage due to application by operators of pesticide, whether by aircraft or otherwise. Neither the filing of the report with the county commissioner nor the failure to

file the report need be alleged in a complaint for damages. Failure to make such report shall not be a bar to action for recovery of civil damages.

CHAPTER 986**ASSEMBLY BILL 781 (Biddick)**

An act to maintain the Agricultural Code by amending Sections 375.6, 1014, 1071.4, and 4273 thereof, and by repealing Sections 83 and 207.6 thereof, relating to the plant and animal industry and the products thereof.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. Makes no substantive change.

CHAPTER 592**ASSEMBLY BILL 776 (Biddick)**

An act to codify Chapter 1473 of the Statutes of 1957 by repealing Section 1 thereof and by adding Section 1153.1 to the Agricultural Code, relating to the establishment of a market news service in the Klamath Basin.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. Makes no substantive change.

CHAPTER 588

C. BUSINESS AND PROFESSIONS CODE

ASSEMBLY BILL 2593 (Bruce F. Allen and Williamson)

An act to amend Section 16750 of the Business and Professions Code, relating to restraints of trade. (Damages.)

Amended in Senate June 16, 1959.

CHAPTER 2078

ASSEMBLY BILL 2595 (Bruce F. Allen and Williamson)

An act to amend Sections 16752 and 16753 of the Business and Professions Code, relating to restraints of trade. (Penalties.)

CHAPTER 2079

ASSEMBLY BILL 2353 (Bruce F. Allen)

An act to amend Section 17082 of the Business and Professions Code, relating to unfair trade practices. (Damages resulting from violation of the Unfair Practices Act.)

Amended in Senate June 16, 1959.

CHAPTER 2074

SENATE BILL 650 (Christensen et al.)

An act to add Article 4 (commencing at Section 21625) to Chapter 9 of Division 8 of the Business and Professions Code, relating to the reporting of transactions involving identifiable secondhand tangible personal property.

Amended in Assembly June 10, 1959.

Committee counsel offered the following comments on the bill as introduced:

Was recommended by the Senate Interim Committee on Secondhand Dealers.

It provides, in general, a duty for persons in the business of dealing with secondhand merchandise to report so-called "identifiable" articles in order that this information might be disseminated throughout the State to assist in the tracing of stolen property. It specifically excludes from its operations those counties and cities where ordinances to this effect already exist and therefore, in substance, simply covers those sections of the State where no similar reporting is required.

There are numerous exceptions to the reporting requirements and very specific definition of "identifiable personal property."

The bill also requires a 10-day holding period prior to resale with respect to covered property.

CHAPTER 1846

ASSEMBLY BILL 857 (Biddick)

An act to amend and renumber Section 24206 (as added by Chapter 1275, Statutes of 1957) of the Business and Professions Code, relating to alcoholic beverages.

Committee counsel offered the following comments on the bill as introduced:

No substantive change.

CHAPTER 621

D. CIVIL CODE

SENATE BILL 79 (Coombs)

An act to add Section 17 to the Civil Code, to add Section 11 to the Code of Civil Procedure, to amend Section 8 of the Corporations Code, to amend Section 13 of the Education Code, to amend Section 8 of the Financial Code, to amend Section 8 of the Labor Code, to add Section 5 to the Probate Code, to amend Section 8 of the Public Utilities Code, and to amend Section 10 of the Vehicle Code, relating to the use of certified mail.

Amended in Senate February 26, 1959.

An act to add Section 17 to the Civil Code, to add Section 11 to the Code of Civil Procedure, to amend Section 8 of the Corporations Code, to amend Section ~~13~~ 31 of the Education Code AS ENACTED BY THE LEGISLATURE AT THE 1959 REGULAR SESSION, to amend Section 8 of the Financial Code, to amend Section 8 of the Labor Code, to add Section 5 to the Probate Code, to amend Section 8 of the Public Utilities Code, and to amend Section 10 of the Vehicle Code, AND TO ADD SECTION 29 TO THE VEHICLE CODE AS PROPOSED BY ASSEMBLY BILL NO. 5, relating to the use of certified mail.

Committee counsel offered the following comments on the bill as amended:

Proposes, in various sections of various codes, that certified mail may be used as an alternative method of notification in addition to the use of registered mail, and that such use of certified mail will comply with the requirements of law now requiring registered mail. The amendments of February 26 include two items which are the subject of 1959 legislation.

CHAPTER 426

ASSEMBLY BILL 1239 (Beaver)

An act to add Section 25.5 to the Civil Code, relating to giving of blood donations.

Amended in Senate May 26, 1959.

Committee counsel offered the following comments on the bill as introduced:

Allows a married male of the age of 18 years to consent to the giving of a blood donation.

The author explained that this was deemed necessary by attorneys for the blood bank groups since the penetration of tissue for the purpose of taking blood might be considered a tort and hence not within the power of the minor to consent since his rights of consent by virtue of C.C. 25 are limited to dealing with his property and the execution of contracts.

CHAPTER 1280

ASSEMBLY BILL 274 (Francis)

An act to add Section 43.4 to the Civil Code, relating to causes of action for fraudulent promises to marry or cohabit.

Committee counsel offered the following comments on the bill as introduced :

The author explained that it was necessary because of a recent case which allowed damages based upon the fraud of a fraudulent promise to marry. This is distinguishable from the so-called breach of promise suit which is now prohibited in this State on the theory that the breach of promise suit is based upon a breach of contract whereas the action for damages upon the fraudulent promise is based upon the fraud and hence by the court held not to be included within the prohibition against suits for breach of promise.

CHAPTER 381**ASSEMBLY BILL 7 (Elliott et al.)**

An act to repeal Section 60, and to amend Section 69, of the Civil Code, relating to miscegenation.

CHAPTER 146**SENATE BILL 588 (Murdy and Rodda)**

An act to amend Sections 70, 73, and 79 of, and to add Sections 69.5, 70.5, 71.5, and 73.5 to, the Civil Code, and to amend Section 10350 of the Health and Safety Code, relating to marriage.

Amended in Senate March 25, 1959.

An act to amend Sections 70, 73, and 79 of, and to add Sections 69.5, 70.1 70.5, ~~71.5~~ 70.6, and 73.5 to, the Civil Code, and to amend Section 10350 of the Health and Safety Code, relating to marriage.

Committee counsel offered the following comments on the bill as amended :

Generally, the bill as amended March 25 provides that persons performing marriage ceremonies shall register in the county of the church or church office address of the minister, and when the minister moves to another county he presents his registration certificate to the county recorder of the new county who reregisters him there.

The bill also provides that marriage licenses shall only be valid for 90 days and each license must be numbered by the county clerk when issued and thereafter transmitted to the county recorder. If no proof has been received by the county recorder that the marriage has been performed within 60 days, the county recorder shall then notify the licensees that the license will expire within 30 days unless the marriage occurs within that period.

The county recorder is also given the duty of examining certificates of marriage returned to him by ministers to ascertain whether the minister is registered and if he is not to notify the minister that registration is required, however, the marriage is not invalidated by the failure to register.

The general purpose of this bill is to provide a system of controls of marriage licenses and to require a stricter keeping of records as to marriages performed. The principal author of the bill described it

as being necessary because of a considerable amount of confusion as to the validity of certain marriages because of failure of licenses to be returned after the ceremony. He also explained that there was no record anywhere as to which persons were performing marriage ceremonies and under what authority, and it was felt desirable to require a more complete set of records in this regard.

The principal amendment recommended by the subcommittee of the Senate Committee on Judiciary was the addition of a section permitting ministers who are temporarily in the State to perform a marriage or marriages without the necessity of an advance registration. Under this plan a minister or priest not otherwise registered could come into the State to perform a special marriage ceremony for a friend or relative in cases where the church he represents maintains a set of records and assumes the responsibility of returning the certificate of marriage to the county recorder's office.

The bill as so amended contains such a provision and also other technical amendments.

Amended in Senate May 6, 1959.

An act to amend Sections 70, 73, and 79 of, and to add Sections 69.5, 70.1, 70.5, 70.6, 70.7 and 73.5 to, the Civil Code, and to amend Section 10350 of the Health and Safety Code, relating to marriage.

Amended in Senate May 13, 1959.

Amended in Senate May 14, 1959.

Amended in Assembly June 16, 1959.

An act to amend Sections 70, 73 and 79 SECTION 73 of, and to add Sections SECTION 69.5, 70.1, 70.5, 70.6, 70.7 and 73.5 to, the Civil Code, and to amend Section 10350 of the Health and Safety Code, relating to marriage.

As enacted into law, the Legislative Counsel summarized the bill as follows:

Provides that a marriage license shall expire 90 days after its issuance, and requires that date of expiration be shown on face of license. Requires county recorder to notify licenseholders, not later than 60 days after date of issuance of license, that license will expire automatically if not used by expiration date. Also requires recorder to notify parties of obligation of person marrying them to return certificate of registry and marriage license to recorder within four days after marriage.

Requires person solemnizing a marriage to type or print his name and address on the license or attach such information to the license, and to place same information on certificate of registry of marriage.

CHAPTER 1757

SENATE BILL 734 (Farr)

An act to amend Section 108 of the Civil Code, relating to divorce on the ground of incurable insanity.

Committee counsel offered the following comments on the bill as introduced:

Deals with the obtaining of a divorce on the grounds of incurable insanity and under the present law confinement in a state mental

institution for a given period of time constitutes such incurable insanity. The bill simply adds confinement to institutions under the control of the Veterans Administration.

Amended in Senate May 13, 1959

Amended in Assembly June 15, 1959.

As enacted into law, the Legislative Counsel summarized the bill as follows:

Broadens provisions allowing divorce where spouse has been incurably insane for at least three years preceding filing of action for divorce, by permitting divorce where such spouse has, during such period, been lawfully confined in or under jurisdiction of any mental institution generally, rather than only where such confinement or exercise of jurisdiction has resulted from use of certain specified procedures in Welfare and Institutions Code and Penal Code. Specifies that provisions of bill apply where all or part of the three years of confinement in, or being subject to the jurisdiction of, the institution, occurred prior to, as well as after, effective date of bill.

CHAPTER 1643

ASSEMBLY BILL 2532 (Waldie)

An act to amend Section 139 of the Civil Code, relating to support of spouse and children. (Where integrated property settlement is contained in court order.)

CHAPTER 1399

ASSEMBLY BILL 365 (Munnell)

An act to amend Section 146 of the Civil Code, relating to disposition of community property and homesteads in cases of divorce and separate maintenance.

Amended in Assembly June 5, 1959.

An act to ~~amend Section 146 of~~ ADD SECTION 143.5 TO the Civil Code, relating to ~~disposition of community property and homesteads~~ CHILD SUPPORT ORDERS in cases of divorce and separate maintenance.

Amended in Senate June 16, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill was amended in the Assembly on June 5 and the Senate on June 16. As last amended, it would have authorized the court trustee to enforce obligations to make support payments for minor children. Such enforcement would have been permissive and would have required consent of the attorney of record.

It was indicated to the committee that the trustee concerned was also probation officer in Los Angeles County, and that the bill was sponsored by Los Angeles County.

Stricken from Senate file after an amend, do-pass recommendation by the Senate Committee on Judiciary.

ASSEMBLY BILL 1491 (Busterud et al.)

An act to add Section 169.2 to the Civil Code, relating to earnings and accumulations after an interlocutory judgment of divorce.

Amended in Senate June 8, 1959.

Committee counsel offered the following comments on the bill as amended:

This is a companion provision to existing law that provides that whenever the wife is living separate and apart from the husband her earnings are her separate property regardless of whether an interlocutory decree has been entered.

CHAPTER 1469**SENATE BILL 71 (Cobey)**

An act to add Section 183 to the Civil Code, relating to recovery for loss of consortium.

Amended in Senate May 21, 1959.

Passage refused by Senate.

ASSEMBLY BILL 1629 (Rumford)

An act to amend Sections 206.5 and 206.7 of the Civil Code, relating to proceedings by adult for release from obligation to support parent.

Amended in Assembly April 10, 1959.

Amended in Senate June 3, 1959.

CHAPTER 1186**SENATE BILL 424 (Collier)**

An act to amend Sections 658 and 660 of the Civil Code, relating to the definitions of real and personal property.

Amended in Senate March 16, 1959.

Amended in Senate March 24, 1959.

Amended in Senate April 27, 1959.

An act to amend Sections 658 and 660 SECTION 3440 *of the Civil Code, relating to the definitions of real and personal property*
STANDING TIMBER OR TIMBER RIGHTS.

Amended in Senate May 11, 1959.

An act to amend Section 3440 SECTIONS 1220 AND 3440 *of the Civil Code, relating to standing timber or timber rights.*

Committee counsel offered the following comments on the bill as amended:

As amended in the Senate on May 11, generally the bill deals with the sale of standing timber.

Two changes are made as follows:

1. Existing law providing for the recordation of contracts for the purchase or sale of standing timber is amended to include contracts executed prior to the effective date of this act which must be recorded within one year.

The present statute which declares that the requirement of such recordation is merely declaratory of existing law is deleted.

2. Section 3440 dealing with fraudulent transfers of personal property is likewise to exclude from its operation standing timber if the contract for the sale of the timber is recorded.

Amended in Assembly June 12, 1959.

Amended in Assembly June 16, 1959.

On June 12, the bill was substantially amended in the Assembly and the bill as last amended in the Assembly on June 16 and as enacted into law is described by the Legislative Counsel as follows:

Exempts from provisions establishing conclusive presumption of fraud on creditors of transferor of personal property where transfer is not accompanied by immediate delivery and actual and continued change of possession, grants or contracts for standing timber where recorded in manner prescribed by law, and transfers of personal property followed by immediate leaseback to transferor where prescribed procedures of recordation and publication of notice are complied with.

Specifies that all contracts for purchase and sale or instruments in writing affecting title to standing timber or trees, executed and delivered before effective date of provisions permitting recordation thereof, and unrecorded prior to that date, shall be subject to all statutory provisions re recordation and nonrecordation of conveyances of real property on and after one year following that date.

CHAPTER 1795

ASSEMBLY BILL 951 (Biddick)

An act to amend Section 715.3 of the Civil Code, relating to restraints upon alienation.

Committee counsel offered the following comments on the bill as introduced:

The bill was proposed for passage by the California Land Title Association and seeks to accomplish two things:

- (1) That the laws against perpetuities do not apply to retirement trusts created in other states. This is the present law as to retirement trusts created in California.
- (2) Profitsharing plans for employees will also be exempted from the rule against perpetuities.

CHAPTER 726

SENATE BILL 165 (Cobey)

An act to repeal Sections 715.1, 770, 771, 774, 775, and 777 of, to amend Sections 715.3, 716, and 724 of, and to add Section 771 to, the Civil Code, relating to future interests in property.

Amended in Senate March 20, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill was recommended by the California Law Revision Commission and relates to the suspension of the absolute power of alienation. The report of the Law Revision Commission on the subject is dated November 30, 1956, and is entitled "Recommendation and Study Relating to Suspension of the Absolute Power of Alienation."

A similar bill was presented to the 1957 Session of the Legislature (AB 241—pages 78-83, Fourth Progress Report by the Senate Interim Judiciary Committee) and recommended for interim study by the Senate Judiciary Committee. The 1957 version was studied by the interim committee and several objections raised by that committee, primarily with regard to the question of allowing perpetual trusts. The 1957 bill permitted a testator to create a trust in such a fashion that it would continue in perpetuity providing the interests of the beneficiaries actually vested in the time limited for the vesting of future interests. In other words, the interests of the beneficiaries must vest but the trust itself could continue indefinitely.

The interim committee objected to the perpetual nature of these trusts, and to meet these objections SB 165 now provides that although perpetual trusts may be created they can be terminated by either one of the following actions: (1) request of a majority of the beneficiaries, or (2) upon petition of the Attorney General to a court of competent jurisdiction.

The following explanation is an excerpt from the 1956 report of the Law Revision Commission:

“Since at least the middle of the seventeenth century Anglo-American law has embodied a policy limiting the power of an owner of property to dispose of it in such a way as to control its use and disposition by future generations. The English courts developed for this purpose the common law ‘rule against perpetuities’ which makes invalid any attempt to create a legal or equitable property interest which will not vest within 21 years after the termination of some life in being at the creation of the interest. Another legal device to achieve the same general purpose was enacted by the Legislature of this State as a part of the Civil Code of 1872. This was the ‘rule prohibiting suspension of the absolute power of alienation’ (present Civil Code Sections 715.1, 716, 770 and 771). This rule was borrowed from the New York law, having been devised by the drafters of the New York Revised Statutes of 1830. The rule prohibiting suspension of the absolute power of alienation (sometimes hereinafter referred to as ‘the suspension rule’) makes void in its creation every future interest which, by any possibility, may suspend the absolute power of alienation for a period not measured by lives in being plus 21 years. The absolute power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

“As will appear from the discussion below, the rule against perpetuities and the rule prohibiting suspension of the absolute power of alienation have a large area of operation in common. However, as will also appear, each rule applies to certain situations not reached by the other. This caused considerable confusion in California prior to 1951 because it was not clear whether the common law rule against perpetuities was a part of our law or whether the enactment by the Legislature of the suspension rule and certain other statutory limitations on the creation of future interests manifested a legislative intention that these should constitute the only limitations on future interests in this State. This uncertainty was ended when the Legislature enacted the ‘American common law rule against perpetuities’ as a part of our law in 1951 (Civil Code Section 715.2). At the same time the Legislature amended

the rule prohibiting suspension of the absolute power of alienation to change the time limitation expressed therein to correspond to that embodied in the rule against perpetuities—i.e., 21 years after some life in being at the creation of the interest.

“The enactment of the rule against perpetuities raises the question whether the Legislature should now repeal the rule prohibiting suspension of the absolute power of alienation. The commission has concluded and recommends that the Legislature should do so for the following reasons:

“1. As appears below and in the research consultant’s report, the suspension rule is no longer necessary in the law of this State. Every desirable result which it achieves can be accomplished by our courts by the application of the prohibition of perpetuities in our Constitution (Article XX, Section 9), the rule against perpetuities (Civil Code Section 715.2), certain other existing statutory and common law rules which limit the creation and duration for future interests, and the statutes recommended for enactment by the commission, *infra*.

“2. As appears below and in the research consultant’s report, the suspension rule is unnecessarily harsh in its operation with respect to the duration of nonterminable private trusts, as compared with other and better ways of placing proper limits on such trusts.

“3. The existence of both the rule against perpetuities and the rule prohibiting suspension of the absolute power of alienation in the law of this State creates ambiguity as to whether they are overlapping or mutually exclusive both in general and as applied to particular situations, thus making our law with respect to future interests unnecessarily complex and confusing to persons affected by it.

“The commission has found that the rule prohibiting suspension of the absolute power of alienation does not apply to certain interests which do not vest within or which extend beyond lives in being plus 21 years. These include options, transfers made to persons ascertained and in existence whose right to take the property is dependent on a contingency which may not happen within the period, possibilities of reverter, rights of entry for condition broken, conditions restraining alienation of property by providing for forfeiture of title upon an attempted alienation, charitable trusts, business trusts (interests vested in certificate holders) and trusts to secure creditors. Since the suspension rules does not presently apply to these interests, its repeal would, of course, have no legal effect as to them.

“The commission has found that the suspension rule is no longer necessary to prevent the unduly remote vesting of property interests because this matter is covered by the rule against perpetuities enacted in 1951. Thus, for example, the two rules presently overlap in invalidating both an interest given to an unborn child who may not come into being within lives in being plus 21 years and an interest given to a person not certain to be ascertained within that period. In this general area the rule prohibiting suspension of the absolute power of alienation is, therefore, superfluous.

“The commission has found that the rule prohibiting suspension of the absolute power of alienation either does or may presently apply to several situations not covered by the rule against perpetuities. But repeal of the suspension rule would have no undesirable effect in these

situations because they would be taken care of by other existing constitutional, statutory, or common law rules which, together with the statutes recommended for enactment by the commission, *infra*, would achieve adequate control of creation of future interests and the duration of nonterminable private trusts. Moreover, the rules and statutes referred to would reach the desired result in a more flexible and reasonable way than does the suspension rule. These situations are the following:

"1. *A transfer of an interest in property upon a condition restraining alienation of the interest created.* Such conditions, with exceptions not here material, are invalidated by Section 711 of the Civil Code which embodies the common law rule against conditions restraining alienation which are repugnant to the interest created. Thus the suspension rule is superfluous with respect to such conditions. Moreover, Section 711 merely makes the condition invalid whereas the suspension rule invalidates the interest created—a far less desirable result.

"2. *The creation of private trusts which may last longer than lives in being and 21 years, either because the active duties of the trustee may continue or because termination is expressly or impliedly prohibited beyond that period.* Two groups of trusts fall into this general category. The first group is made up of special types of trusts not of frequent occurrence—trusts for indefinite, noncharitable objects, for unincorporated associations where the beneficiary is the collective entity and where the trust is to run on indefinitely with no power in the members at any time to wind it up, and "honorary" trusts, *i.e.*, purported trusts for specific noncharitable objects without human beneficiaries. Trusts of these types may vest within lives in being plus 21 years, and thus not violate the rule against perpetuities, but last far beyond that period thus violating the present rule prohibiting suspension of the absolute power of alienation. However, the suspension rule is not needed as protection against these trusts because, as is pointed out in the research consultant's report, the courts have struck them down under other rules of law both under the law of California and under the general law of trusts. Hence, the commission believes, repeal of the suspension rule would have no effect with respect to these trusts. Moreover, they would be controlled by the statutes recommended for enactment by the commission, *infra*.

"The second and more important group of trusts in this category consists of ordinary private trusts where all the beneficial interests vest within lives in being plus 21 years and thus do not violate the rule against perpetuities but which must or may last indefinitely or at least beyond that period. Our courts have held that the rule suspending the absolute power of alienation applies to such trusts and that it requires the courts to strike down both those trust interests which may endure beyond the suspension rule period and also all other interests under the trust which are found not to be separable from those which will last too long.

"Where the only objection to a trust, as in the case of those in this second group, is that the trust must or may last too long, the real problem presented, the commission believes, is one of the terminability of the trust. If the trust can be wound up by those having interests

under it at a time not beyond the period of perpetuities there is no tying up of property contrary to the public interest even though the trust may in fact last longer than the period if the beneficiaries do not decide to terminate it. Eminent text writers are in substantial agreement, therefore, that the proper solution to the problem is to preserve the element of terminability, so that the assets of such a trust are not tied up too long, by either disregarding altogether any express or implied provision in an instrument creating a trust which would prevent the beneficiaries from terminating it beyond the period of perpetuities or by limiting the provision so as not to apply beyond that period. Instead of taking this approach to the problem, however, the California courts have held that the suspension rule requires them to strike down either some or all of the trust interests involved. This has not only unnecessarily defeated the intention of persons creating trusts but it has also put California at a considerable disadvantage as a jurisdiction in which to establish trusts.

"The view of the matter taken by the text writers, that ostensibly nonterminable trust interests which last beyond lives in being plus 21 years should be held to be terminable and thus saved, seems eminently better than the approach to the matter which has thus far been taken by the California courts. However, there is no well-established body of decisional law either in this State or elsewhere as to precisely how the question of terminability should be handled by the courts in all of the various kinds of cases in which it may arise. It is possible, of course, that the courts in California, if freed from the suspension rule, would be led by the implications of our Constitutional prohibition of perpetuities (Article XX, Section 9) and the general policy of our law against undue fettering of property to accept the position of the text writers just mentioned and the scanty authority which now exists in support thereof, and disregard any barrier to the termination of the trusts in question beyond the period of perpetuities. However, to repeal the rule prohibiting suspension of the absolute power of alienation without substituting a statutory provision with respect to the period for which a private trust may be made nonterminable, relying upon the courts to develop decisional rules for this purpose, would be to substitute a considerable measure of uncertainty for what is at present a certain, if unduly drastic, statute covering the matter. The commission therefore recommends that a statute be enacted specifying the period for which a trust may be made nonterminable. Such a statute would necessarily have to be cast in rather general terms and leave considerable discretion to the courts in order to provide sufficient flexibility to enable them to deal with the various kinds of situations which may be expected to arise.

"The commission also believes that Sections 774, 775 and 777 of the Civil Code are no longer necessary. These sections were also enacted in the original Civil Code of 1872 as a part of our borrowing from the New York Revised Statutes of 1830. They limit the creation of future interests in the following ways: (1) successive life estates can only be given to persons in being at the creation of the interests (Section 774); (2) after successive life estates the remainder must be in fee (Section 775); (3) after a life estate created in a term for years,

the remainder must be for the whole residue of the term (Section 775); (4) a life estate created as a remainder on a term of years can only be given to a person in being at the creation of such estate (Section 777). These provisions all invalidate future interests which are valid insofar as the rule against perpetuities is concerned. When there was doubt whether the rule against perpetuities was in effect in this State there was some justification for them. The commission believes, however, that since we now have the rule against perpetuities there is no further need for these more restrictive rules which make California a less favorable jurisdiction for the creation of trusts and other future interests than many other states. Hence, it is recommended that Sections 774, 775 and 777 be repealed."

CHAPTER 470**ASSEMBLY BILL 2291 (Bradley)**

An act to add Section 715.4 to the Civil Code, relating to exclusion of certain trusts from the rule against perpetuities and the rule against restraints of alienation. (Trusts created to provide group insurance benefits.)

Amended in Senate June 4, 1959.

CHAPTER 1240**SENATE BILL 166 (Cobey)**

An act to add Section 1073 to the Civil Code and to add Section 109 to the Probate Code, relating to a grant, devise or bequest to a grantor's or testator's own heirs or next of kin.

Doctrine of worthier title. This bill, sponsored by the California Law Revision Commission, was passed without amendment. The following explanation of the purpose of the bill is an excerpt from the commission's report entitled, "Recommendation and Study Relating to the Doctrine of Worthier Title," dated January 1959:

"The so-called doctrine of worthier title originated in feudal England as a rule of property which made void an attempted testamentary or inter vivos transfer of real property to the transferor's own heirs. The rule originated in feudal policy and was abolished by statute in England in 1833 when feudalism had passed into history.

"What might be called the American doctrine of worthier title exists in most states today. However, as generally applied this doctrine differs in three important respects from its English antecedent. First, it is not applied to testamentary transfers. Second, it is generally applied to inter vivos transfers of personal as well as real property. Third, it is not applied as a rule of property which disables a person from making an effective grant of property to his own heirs or next of kin, but as a presumption or rule of construction that a grantor does not ordinarily intend by executing such a grant to divest himself of his interest in the property. As is shown in the research consultant's report, *infra*, the California Supreme Court held in *Bixby v. California Trust Co.*,¹ decided in 1949, that the American doctrine of worthier title is a part of the law of this State.

¹ 33 Cal.2d 495, 202 P.2d 1018 (1949).

"The commission recommends that the doctrine of worthier title be abolished as to both inter vivos and testamentary transfers through the enactment of new sections of the Civil Code and the Probate Code, set forth below. The Probate Code provision is recommended only out of an abundance of caution since it is generally agreed that the American doctrine of worthier title does not apply to testamentary transfers.

"There are three basic reasons for the commission's recommendation:

"1. The commission believes that the doctrine of worthier title is based on a false premise—*i.e.*, the assumption that a person granting property to his own heirs or next of kin does not really intend to give the property to them or understand that he has done so but rather intends to retain a reversion in the property with full power to dispose of it again in the future. Thus, the doctrine frustrates rather than effectuates the actual intention of grantors in the cases in which it is decisive.

"2. As the research consultant's analysis of the New York decisions applying the American doctrine of worthier title shows, the doctrine breeds litigation. Since the doctrine is merely a presumption or rule of construction to be applied in ascertaining the intention of the grantor, it can be overcome by showing that the grantor actually meant what he said—*i.e.*, that the property should go to his heirs or next of kin. In New York litigants have frequently attempted to make such a showing, with a record of success which has encouraged others to do so. While there has been no such history of litigation in California in the few years which have elapsed since the *Bixby* case was decided, there is no reason to believe that the citizens of this State will prove to be less litigious than those of New York as situations arise over the years in which the doctrine is applicable.

"3. As the research consultant's study shows, the doctrine of worthier title can easily operate as an estate and inheritance tax trap by creating a reversionary interest in the estate of a grantor who intended to avoid such taxes by making an inter vivos transfer of the property to his heirs or next of kin.

"The commission believes that the statute abolishing the doctrine of worthier title should be applied to legal instruments in existence on its effective date as well as those subsequently executed. A legal doctrine which defeats rather than effectuates intention, breeds litigation and operates as a potential tax trap should be eliminated from our law as soon as possible. Moreover, the Commission does not believe that grantors have relied upon the *Bixby* rule in drawing inter vivos instruments; one wishing to retain a reversion rather than to create a remainder would surely do so directly rather than to say the opposite of what he means and rely upon a disputable presumption or rule of construction to accomplish the result which he desires. For these reasons, a provision making the abolition of the doctrine retroactive except as to instruments the meaning of which has been finally adjudicated is included in the statute which the commission is recommending.

"The commission recognizes, however, that there is some doubt whether a statute abolishing the doctrine of worthier title can constitutionally be made applicable in cases involving instruments in effect prior to its enactment. While the decisions of the United States Su-

preme Court seem to make it clear that the retroactive application of a statute changing a presumption or a rule relating to burden of proof does not violate the United States Constitution,² several California decisions suggest that the retroactive application of such a statute may violate the Constitution of this State.³ Because of the doubt engendered by the latter decisions the commission has included a separability clause in the legislation which it is recommending."

CHAPTER 122

SENATE BILL 351 (Farr)

An act to repeal Article 4, comprising Sections 1154 to 1164, inclusive, of Chapter 3, Title 4, Part 4, Division 2 of the Civil Code, and to add Article 4, comprising Sections 1154 to 1165, inclusive, to Chapter 3, Title 4, Part 4, Division 2 of the Civil Code, relating to gifts of money and securities to minors.

Committee counsel offered the following comments on the bill as introduced:

This bill, sponsored by the Commission on Uniform State Laws, broadens the model act on gifts of securities to minors (P.C. 1154 et seq. 1955) to also permit gifts of money, to permit custodian to invest or reinvest the money under prudent man rule and to permit donor to select as original custodian any adult person or trust company (not limited to adult members of minor's family).

The principle of the bill was approved by National Conference of Commissioners on Uniform State Laws about three years ago and since then enacted in 29 states.

The State Bar made the following comments in a letter dated December 3, 1958:

"Uniform Gift to Minors Act, was previously referred to our Committees on Taxation and Administration of Justice. The report of the Taxation Committee, not yet considered by the board, says this, in part:

"a. The act will produce, for the most part, no income, gift or estate tax consequences different from those produced by C.C. Sections 1154-1164.

"b. That the essential changes the Act will make (as compared to C.C. Sections 1154-1164) are:

"1. Any adult, bank, or trust company may be the custodian.

"2. The gift may consist of money as well as securities.

"3. There is very little protection of the minor against invasion of principal as well as income by the custodian, who in some cases would be the donor.

"4. Making the statute so broad as to include gifts other than securities practically nullifies the guardianship sections of the Probate Code."

Amended in Senate March 2, 1959.

Amended in Senate April 16, 1959.

² *Easterling Lumber Co. v. Pierce*, 235 U.S. 380 (1914); *Luria v. United States*, 231 U.S. 9 (1913); *Reitler v. Harris*, 223 U.S. 437 (1911).

³ *Nilson v. Sarment*, 153 Cal. 524, 96 Pac. 315 (1908); *Lewis v. Burns*, 122 Cal. 358, 55 Pac. 132 (1898); *Jordan v. Fay*, 98 Cal. 264, 33 Pac. 95 (1893); *Estate of Giordano*, 85 Cal. App.2d 588, 193 P.2d 771 (1948); *Estate of Thrann*, 80 Cal. App.2d 756, 183 P.2d 97 (1947).

As enacted into law, the Legislative Counsel summarized the bill as follows:

“Repeals California Gifts of Securities to Minors Act and enacts California Uniform Gifts to Minors Act, applicable to gifts of money as well as securities.”

CHAPTER 709**ASSEMBLY BILL 783 (Biddick)**

An act to maintain the Civil Code by amending Sections 1172 and 3081.1 thereof, and by repealing Section 2924½ thereof, relating to instruments affecting property. (Real property.)

Committee counsel offered the following comments on the bill as introduced:

No substantive change.

CHAPTER 593**ASSEMBLY BILL 310 (Thelin)**

An act to amend Section 1181 of the Civil Code, relating to officers who may take proof or acknowledgment of an instrument.

Amended in Assembly February 27, 1959.

Committee counsel offered the following comments on the bill as amended:

The bill conforms the provisions of Section 1181 of the Civil Code to those of Section 8200 of the Government Code. The Government Code section allows a notary to take an acknowledgment at any place within the State and this bill amends the Civil Code in a similar fashion.

CHAPTER 1162**ASSEMBLY BILL 2344 (Thelin)**

An act to amend Section 1243 of the Civil Code, relating to abandonment of homestead.

Amended in Assembly May 29, 1959.

CHAPTER 1960**SENATE BILL 461 (Dolwig)**

An act to add Chapter 5 (commencing with Section 1300) to Title 5, Part 4, Division 2 of the Civil Code, and to amend Sections 1241, 1242, 1243, and 1265 of said code, and to amend Sections 660 and 663 of the Probate Code, relating to homesteads.

This bill was sponsored by the California Land Title Association, and their explanation of the measure, as introduced, follows:

Explanation of Proposed Married Person's Separate Homestead

“A problem is presented under California law when a spouse attempts to declare a valid Declaration of Homestead following the rendition of an interlocutory decree of divorce and before the entry of the final decree. Since the interlocutory decree of divorce does not sever the marriage relation, there is no form of homestead which can be filed,

except a joint protection homestead. The unfortunate result of this situation is that under Civil Code Section 1265, once a spouse selects the homestead from his or her separate property in the joint protection form, the other spouse is immediately given a homestead interest in the property.

"It is true that this homestead interest given the other spouse is destroyed by the rendition of a final decree of divorce, but during the interim it continues to exist with two unfortunate results:

"1. The spouse selecting the homestead from his or her separate property can no longer convey or encumber such property without the consent of the other spouse. (This has resulted in actual cases where the homesteaded property of a divorced person has been lost because they have been unable to raise any money until a final decree has been entered.)

"2. If the spouse selecting such homestead should die prior to the final decree of divorce, the title would pass to the other spouse.

"It is the purpose of this amendment to permit a spouse to declare a homestead on his or her separate property after the rendition of an interlocutory decree of divorce without giving the other spouse a homestead interest in the property. This will entail an additional code section in the Civil Code under the chapter on 'Homesteads,' authorizing a new form of declaration of homesteads, and also an amendment of the Probate Code in the chapter on 'Probate Homesteads.'

"The code sections in the Civil Code under Title V and also the sections in the Probate Code commencing with Section 660 have been carefully examined to determine what effect the existing sections have under such a state of facts and what amendments are required.

"The Homestead Act consists at the present time of three chapters: Chapter I consists of general provisions; Chapter II is devoted to 'Homestead of the Head of a Family'; and Chapter III is devoted to 'Homestead of Other Persons.'

"Since the type of homestead which the California Land Title Association desires to authorize would in some cases be filed by the head of a family, and in some cases would be filed by a person other than the head of a family, it is necessary to establish a new type of homestead under a separate chapter. This is also advisable since the new type of homestead can be designated by a name which will permit easy cross-reference in the other code sections which are presently in conflict with the new type of homestead.

"A proposed Chapter V (Chapter IV being a repealed chapter referring to alienation of homestead of insane persons) has therefore been prepared and has been designated as 'Married Person's Separate Homestead.' This designation is indicative of the fact that the new homestead is always filed by a married person on the separate property of the declarant.

"The new chapter is set up in the same manner as existing Chapters II and III, and as far as possible, the same format and the same method of cross referencing have been used. Also, the same terms found in the existing chapters have been used.

"It was necessary to re-define the expression 'Head of a Family' for the purposes of this chapter, since Section 1261 includes in the definition of a 'Head of a Family' the husband. Since after the rendition of

an interlocutory decree of divorce or decree of separate maintenance the husband might not actually be the head of a family, the term has been re-defined, confining it to the persons enumerated in paragraph numbered 2 of Section 1261.

“It was necessary to amend five existing code sections to prevent the effects of a ‘Joint Protection Homestead’ attaching to the new ‘Married Person’s Separate Homestead.’ These code sections are Civil Code 1242, 1243 and 1265, and Probate Code Sections 660 and 663. It was not necessary to make any deletion in these sections.”

Amended in Senate April 1, 1959.

Amended in Assembly May 1, 1959.

Amended in Assembly May 22, 1959.

Amended in Assembly May 29, 1959.

CHAPTER 1805

SENATE BILL 116 (Teale, Berry, and Arnold)

An act to add Section 1631 to the Civil Code, relating to sales of mining equipment.

Amended in Senate March 20, 1959.

An act to add Section 1631 to the Civil Code AND TO ADD 653D TO THE PENAL CODE, relating to sales of mining equipment.

Committee counsel offered the following comments on the bill as amended:

Basically, the bill requires bills of sale upon the selling of any mining machinery and the keeping of a written record of those sales.

The sponsors of the bill advocated its passage for the reason that there appeared to be, in the mining areas, excessively high thefts of mining machinery which was dismantled and sold for scrap, etc.

CHAPTER 222

ASSEMBLY BILL 1426 (O'Connell)

An act to amend Section 1858.56 of the Civil Code, relating to warehousemen's liens. (Use of certified mail.)

CHAPTER 1822

ASSEMBLY BILL 1708 (Grant et al.)

An act to amend Section 1861a of the Civil Code, relating to liens of keepers of apartment houses, apartments, cottages, and bungalow courts.

As introduced, the Legislative Counsel summarized the measure as follows:

The amendment of May 22 was directed to limiting the lien to “luxury items.” A limited amount of furniture was restored to the exempt list, leaving, apparently, such items as radios, TV sets, etc., open to lien.

Amended in Assembly May 22, 1959.

An act to amend Section 1861a SECTIONS 1861A AND 1862 of the Civil Code, relating to liens of keepers of apartment houses, apartments, cottages, and bungalow courts.

Amended in Assembly May 29, 1959.

This bill received a "do pass" recommendation by the Senate Committee on Judiciary, as amended in the Assembly on May 29, but was refused passage by the Senate.

ASSEMBLY BILL 2343 (Thelin)

An act to amend Sections 2924 and 2924b of the Civil Code, relating to sales of mortgaged real property. (Notice.)

This bill was sponsored by the Land Title Association.

As introduced, the Legislative Counsel summarized the bill as follows:

Changes the provisions governing the sale of mortgaged realty under a power of sale to provide that a recital, in a deed executed pursuant to such power, of compliance with all the requirements of law regarding the various notices to be given in connection with such sales shall be deemed prima facie evidence of compliance with the requirement that notice of such sales must be posted on the premises and published in a newspaper, and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

Makes other technical changes.

Amended in Assembly May 29, 1959.

CHAPTER 1890

SENATE BILL 78 (Coombs)

An act to amend Section 2924b of the Civil Code, relating to the use of certified mail for notices of default and sale under deeds of trust or mortgages.

CHAPTER 425

ASSEMBLY BILL 952 (Biddick)

An act to amend Section 2934a of the Civil Code, relating to the substitution of trustee under trust deed.

Committee counsel offered the following comments on the bill as introduced:

This is a bill sponsored by the California Land Title Association which deals with deeds of trust and seeks to accomplish two results:

1. Beneficiaries not of record may substitute trustees. (To cover cases of assignment of the security.)

2. A notice of substitution may be filed by the trustee of record rather than the present requirement that it must be signed by the trustee named in the trust deed. (This is to take care of successive substitutions.)

CHAPTER 727

SENATE BILL 167 (Cobey)

An act to repeal Sections 2974 and 2975 of, and to add Section 2975 to, the Civil Code, relating to mortgages of personal property or crops to secure future advances.

Amended in Senate March 20, 1959.

This bill was sponsored by the California Law Revision Commission. The following explanation of the purpose of the bill is an excerpt from the commission's report entitled "Recommendation and Study Relating to Mortgages to Secure Future Advances," dated November 1958:

"In a mortgage for future advances a present lien is created on the property used as security but the parties agree that all or part of the loan secured is to be made in the future. The major legal problem arising under such mortgages is that of priority as between the mortgagee and one who acquires a lien on the property after the mortgage becomes effective but prior to one or more of the subsequent advances under it. Under the rules applied by a majority of American jurisdictions priority between subsequent advances and intervening liens is made to turn on a distinction taken between obligatory and optional advances. If the mortgagee is legally bound by the agreement between the parties to make subsequent advances, they are called obligatory and are entitled to priority even though the mortgagee had actual notice of the intervening lien when the advance was made. If the mortgagee is not under a legal obligation to make future advances they are called optional and are inferior in priority to intervening liens of which the mortgagee had actual notice when the advance was made. Record notice, however, is not enough.

"Except for a statute enacted in 1957 which in some situations gives an optional advance under a construction mortgage priority over an intervening mechanics' lien of which the mortgagee had actual notice, the California law on real property mortgages for future advances is decisional rather than statutory. The California courts have applied the general rules outlined above to such mortgages. After a careful study the Law Revision Commission's research consultant concluded that no change in our law respecting real property mortgages for future advances is necessary or desirable. His conclusion was subsequently concurred in by several attorneys of long experience in this field whose views were solicited by the research consultant at the request of the Commission. On the basis of its study of the matter the Commission has concluded that no change should be made in the law of this State respecting real property mortgages for future advances and respectfully so recommends to the Legislature.

"Prior to 1935 the California law respecting personal property mortgages for future advances was also decisional rather than statutory. In that year the Legislature enacted Sections 2974 and 2975 of the Civil Code, both of which give the same priority to optional as to obligatory advances under mortgages of personal property for future advances, provided certain conditions are met. The condition specified in Section 2974 is that the mortgage state that it is for the purpose of financing the mortgagor during one or more production periods; that specified in Section 2975 is that the maximum amount to be secured be stated in the mortgage.

“As the report of the Commission’s research consultant shows, the origin of Sections 2974 and 2975 is obscure, their meaning is in many respects unclear, and they appear to overlap to a considerable degree. The major question left unanswered by these sections is what consequence follows when a personal property mortgage for future advances does not comply with the conditions specified in them. The research consultant concluded that the result is not that the mortgage is void but is only that optional advances thereunder are not entitled to priority over intervening liens of which the mortgagee has actual notice at the time of the advance. This conclusion was concurred in by the experienced attorneys with whom the consultant discussed the question. However, the matter is one of such importance that it ought not to be left open until a case requires its authoritative decision.

“The research consultant concluded that Sections 2974 and 2975 should be consolidated into a single new section which would retain the best features of each section while eliminating the existing ambiguities in them and which would have the substantive legal effect of giving optional advances the same priority as obligatory advances if the maximum amount to be secured is stated in the mortgage. The Commission concurs in this conclusion and has drafted a statute for this purpose (see proposed statute, *infra*). The new Section 2975 of the Civil Code which this statute would enact would, in the main, codify rather than change existing law with respect to mortgages of personal property to secure future advances. Its salient features are the following:

“1. If optional advances are to have the same priority as obligatory advances, the maximum amount to be secured must be stated. This continues in effect a provision presently found in Section 2975 of the Civil Code and serves to give subsequent lienors some notice of the potential maximum amount of the mortgagee’s prior lien on the property. It should be noted, however, that the proposed statute limits the mortgagee’s priority to the amount stated only with respect to advances and not with respect to accrued interest or advances and expenditures made by the mortgagee which are necessary to preserve the value of the security. Thus, the total amount entitled to priority over intervening liens including advances, accrued interest and expenditures necessary to preserve the security may exceed the amount stated in the mortgage.

“2. The stated maximum amount refers only to advances outstanding at any given time; amounts previously advanced and repaid are not included. This provision is taken from present Section 2975. It permits flexibility in credit arrangements on an ‘open account’ basis, under which sums are regularly advanced and repaid, but does not create any special hardship to the subsequent lienor who is on record notice when he acts that the mortgagee’s lien for advances may be equal to the maximum amount stated.

“3. Repayment in full of a mortgage of personal property for future advances does not discharge it. This provision is taken from Section 2974 which in turn merely codifies an earlier decisional rule. The justification for this provision is the same as that for disregarding amounts previously advanced and repaid—*i.e.*, the desirability of keeping such a mortgage ‘alive’ so long as the parties desire to utilize it in an ‘open

account' credit arrangement. Of course, if a mortgagor who has repaid a mortgage for future advances in full desires to have it discharged he is entitled under Section 2941 of the Civil Code to have the mortgagee deliver a certificate of discharge or enter a satisfaction of record; a cross-reference to Section 2941 is included in proposed new Section 2975 to remove any doubt on this point.

"4. The provision that advances and expenditures made by the mortgagee which are necessary to preserve the security are entitled to the priority originally established by the mortgage and the provision that accrued interest on an advance has the same priority as that of the advance itself are believed merely to codify existing law and are included to avoid any ambiguity on these matters which might otherwise be thought to exist. These provisions are, of course, applicable to all mortgages for future advances, whether or not the maximum amount to be secured is stated in the mortgage."

CHAPTER 528

SENATE BILL 1113 (Beard)

An act to amend Section 2982 of the Civil Code, relating to conditional sales of motor vehicles.

Amended in Senate May 14, 1959.

Committee counsel offered the following comments on the bill as amended in the Senate on May 14:

Under present law it is the duty of the seller to specify in detail a series of items contained in the agreement between the parties including the computations of unpaid balances etc. This bill makes several changes in that law as follows:

1. An acknowledgment of receipt of the contract is prima facie evidence that an exact copy containing all necessary terms was received by the purchaser.

2. Failure of the seller to comply is waived by the buyer when he has made two or more payments and in any event by the lapse of 90 days unless he has rescinded in the meantime.

3. Buyers have no right to rescind if they procured their own financing even though the dealer failed to present him with the purchase contract as required.

Amended in Senate May 25, 1959.

Amended in Assembly June 12, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Weakens protection now granted to auto buyers; difficulty in determining what are 'minor deficiencies.'"

SENATE BILL 1088 (Regan)

An act to amend Section 2982 of the Civil Code, relating to conditional sales of motor vehicles.

Amended in Senate May 22, 1959.

Amended in Senate June 3, 1959.

Remained in Assembly Committee on Judiciary—Civil.

ASSEMBLY BILL 1145 (Williamson and Donahoe)

An act to amend Section 2982 of the Civil Code, relating to conditional sales of motor vehicles.

Amended in Assembly March 13, 1959.

Amended in Assembly April 17, 1959.

Amended in Assembly May 29, 1959.

Amended in Senate June 16, 1959.

An act to amend Section 2982 of AND TO ADD SECTION 2982.5 TO the Civil Code, relating to conditional sales of motor vehicles.

Committee counsel offered the following comments on the bill:

This measure as introduced, proposed an amendment to Section 2982 of the Civil Code. In this form, the bill was amended in the Assembly on March 13, April 17, and May 29, and in the Senate on June 16.

Amended in Senate June 18, 1959.

An act to amend Section 2982 of and to add Section 2982.5 to the Civil Code, relating to conditional sales of motor vehicles.

On June 18, the Senate further amended the bill to exclude reference to Section 2982, and amended the title to provide for the addition of Section 2982.5.

As enacted into law, the Legislative Counsel summarized the bill as follows:

Provides that conditional sales contract for sale of motor vehicle may contain provision that buyer or registered owner shall notify legal owner in writing of any change in buyer's address, within 30 days thereof.

CHAPTER 1874**SENATE BILL 585 (Grunsky)**

An act to amend Section 3031 of the Civil Code, relating to inventory liens.

Committee counsel offered the following comments on the bill as introduced:

The bill is sponsored by the California Bankers Association and makes technical changes in the inventory lien statute specifically to make it clear that the lien can act either upon all merchandise of the borrower or upon all merchandise of a designated class. The bill was heard by the Senate Interim Judiciary Committee and generally approved.

See SB 225—Farr et al.—“Secured Transactions Involving Personal Property. Recommended for interim study by the 1959 Senate Committee on Judiciary.)

CHAPTER 1914**ASSEMBLY BILL 568 (MacBride and Munnell)**

An act to amend Section 3051a of the Civil Code and Section 425 of the Vehicle Code, relating to liens. (Possessory.)

Amended in Assembly February 27, 1959.

Amended in Assembly March 3, 1959.

An act to amend Section 3051a of the Civil Code and Section 425 of the Vehicle Code SECTIONS 3051A AND 3068 OF THE CIVIL CODE, relating to liens.

Committee counsel offered the following comments on the bill as amended:

As introduced, and as amended in the Assembly on February 27, the bill also included an amendment to Section 425 of the Vehicle Code. The reference was deleted by amendment in the Assembly on March 3, and an amendment provided to Section 3068.

AB 568, as amended in the Assembly on March 3, and as enacted into law, provides that excess of lien over \$200, rather than \$100, is invalid if the person who performs work or renders service or provides care, parking, or safekeeping for personal property if it is provided at the request of a person other than the holder of legal title unless prescribed notice is given to the holder of legal title prior to commencing work, etc. Obsolete cross-references were also corrected through this bill.

This measure was sponsored by the Independent Garage Owners Association who submitted the following statement:

"The INDEPENDENT GARAGE OWNERS OF CALIFORNIA, INC., strongly supports the passage of Assembly Bill No. 568, which is an act to amend Section 3051A of the Civil Code and Section 425 of the Vehicle Code, relating to liens, for the following reasons:

"1. The basic sections of the Code, i.e. Section 425 of the Vehicle Code and Section 3051 of the Civil Code, provide for possessory liens inuring to the benefit of artisans for work performed by them on property belonging to others. This is an outgrowth of the Common Law Lien which prevails in almost all trades. The basic laws were incorporated into the Code in the early history of the State. In 1923 the basic law was amended to provided that in the case of persons who perform labor or services on vehicles that portion of such lien in excess of \$100.00 is invalid as against the legal owner of the vehicle when the work is performed without his consent. The \$100.00 limitation is based on values as of 1923 and is entirely unrealistic in light of today's values; i.e.,

"a) In 1923, \$100.00 was a considerable repair bill on an automobile. In today's market a \$100.00 repair bill is anything but unusual.

"b) The recent complications in the construction of automobiles requires skilled labor, and the prices on both labor and parts are considerably in excess of what they were, even in relation to other rising prices, at the time the amendment to the Code was added.

"2. Many jurisdictions within the United States have no limits insofar as the applicability of the lien to the legal owner is concerned. All jurisdictions have not been checked but a sample shows the following:

"Arizona—No present law but bill in legislation at present time with a \$300 limit.

"Arkansas—No limit on liens as far as mortgagors' interests are concerned.

"Colorado—Proposed legislation \$300 limit.

"Connecticut—No limit.

"Florida—No limit.

“Georgia—No limit but requirement of recordation.

“Illinois—No limit.

“Kansas—No limit.

“Kentucky—No limit.

“Michigan—\$400 limit.

“Minnesota—No limit.

“Montana—No limit.

“Nebraska—No limit subject to recording statute.

“Nevada—\$300 limit.

“North Carolina—No limit.

“Oregon—No limit.

“Pennsylvania—No limit subject to recording statute.

“Wisconsin—Limit \$200, automobiles; \$300, trucks; \$500, tractors.

“3. Since it is quite frequent that repair bills in excess of \$100.00 are incurred, the provision enabling a legal owner to obtain possession of the vehicle upon the payment of \$100.00 results in unjust enrichment to the legal owner since most of the work, it must be assumed, which is done on an automobile, is necessary and a full price would ordinarily be paid by the legal owner even upon a repossession.

“4. The existence of the \$100.00 limitation makes the lien law all but ineffective since the repair man will sooner release the vehicle, thereby losing his possessory lien, in hopes of receiving full payment, rather than retaining it with the realization that the vehicle can be repossessed by a bank or finance company upon the payment of \$100.00.

“5. While it is true that the lien remains in full force when the legal owner has given his consent, most banks and finance companies are not set up to give approval for work to be done on vehicles, and as a consequence this part of the Code is highly impractical. In addition to this, there is a time factor involved and in many instances it is most important to the customer that the work be performed promptly.

“It is the opinion of the Independent Garage Owners of California, Inc., that an increase as indicated by Assembly Bill 568 will result in hardship to no one, particularly the public at large, and will give the force which was originally intended to Vehicle Code Section 425 and Civil Code Section 3051. As indicated above, the present condition of the law is such as to deprive the repairman of the protection which was originally intended by the legislators when the bill was passed.”

CHAPTER 197

ASSEMBLY BILL 1293 (Z'berg)

An act to amend Section 3052 of the Civil Code, relating to possessory liens.

Committee counsel offered the following comments on the measure as introduced:

The bill provides that in cases of possessory liens for services, notice of the sale of the property must be given no more than 20 days prior to the sale. At the present time this section provides no maximum period between the notice and sale.

The proposed amendment conforms the section to a similar provision in Section 428 of the Vehicle Code.

CHAPTER 781

ASSEMBLY BILL 1484 (Mulford)

An act to amend Section 3287 of the Civil Code, relating to interest as damages.

Amended in Assembly May 18, 1959.

Amended in Senate June 15, 1959.

Committee counsel offered the following comments on the bill as introduced:

Provides that the State, cities, counties, cities and counties, municipal corporations, public districts, and public agencies, as well as political subdivisions of the State, are included within the description of debtors against whom interest may be recoverable as damages.

CHAPTER 1735**ASSEMBLY BILL 2143 (Miller)**

An act to amend Section 3440 of the Civil Code, relating to fraudulent transfers of property.

Amended in Assembly May 22, 1959.

Amended in Assembly May 29, 1959.

Amended in Assembly June 5, 1959.

Because of the numerous amendments to this measure, without amendment to the title, the Legislative Counsel summarized the bill as enacted into law as follows:

Excepts from general rule that transfer of personal property without immediate and continued change of possession is conclusively presumed fraudulent on transferor's creditors, a transfer followed by immediate leaseback if prior notice is recorded and published in prescribed manner.

Provides that such general rule does not affect rights of chattel mortgagee who acquires his rights to personal property from transferee or his successor if mortgagor or mortgagee records and publishes prior notice of transfer and intended mortgage in prescribed manner.

CHAPTER 1794**ASSEMBLY BILL 1387 (Hanna)**

An act to add Section 3448 to Title 3, Part 2, Division 4 of the Civil Code, relating to assignments for the benefit of creditors.

Committee counsel offered the following comments on the bill as introduced:

Provides simply that assignment to the sheriff for the benefit of creditors is merely an alternative to a common law assignment rather than an exclusive method.

CHAPTER 1284

E. CODE OF CIVIL PROCEDURE

ASSEMBLY BILL 784 (Biddick)

An act to maintain the Code of Civil Procedure by amending Sections 13a, 89, 112, 196.1, 689d, and 690.27 thereof, relating to proceedings in civil cases including the organization, jurisdiction, and administration of courts of justice, and the procedure in civil actions and special proceedings of a civil nature.

Committee counsel offered the following comments on the bill as introduced:

Makes no substantive change.

CHAPTER 594

ASSEMBLY BILL 1520 (George A. Willson and Munnell)

An act to amend Sections 75 and 170 of the Code of Civil Procedure, and Sections 75002, 75003, and 75028 of the Government Code, relating to the assignment of judges.

Committee counsel offered the following comments on the bill as introduced:

Relates to the assignment of judges by the Judicial Council and makes it clear that the chairman of the Judicial Council is the one who actually makes the assignment.

CHAPTER 744

ASSEMBLY BILL 2174 (Marks)

An act to amend Sections 89 and 112 of the Code of Civil Procedure, relating to municipal and justice courts.

Amended in Senate May 22, 1959.

Committee counsel offered the following comments on the bill as amended:

As amended in the Senate on May 22, municipal and justice courts are given original jurisdiction in actions for recovery of interests in personal property and to enforce liability of debtor or judgment debtor where amount is \$500 or less.

The original jurisdiction of justice courts in proceedings in forcible entry, or forcible or unlawful detainer is increased to include instances where the rental value is \$125 or less, rather than \$75 or less, per month.

CHAPTER 1097

SENATE BILL 884 (Christensen et al.)

An act to amend Section 112 of the Code of Civil Procedure, relating to jurisdiction of justice courts.

Committee counsel offered the following comments on the bill as introduced:

Increases original jurisdiction of justice courts in forcible entry proceedings, or forcible or lawful detainer, to include those instances where the rental value is \$125 or less than \$75 per month.

See also Chapter 1097, AB 2174.

CHAPTER 880

SENATE BILL 37 (Richards)

An act to amend Section 117j of the Code of Civil Procedure, relating to appeals from small claims courts.

Committee counsel offered the following comments on the bill as introduced:

Makes it clear that there shall be no appearance fee charged to the plaintiff when he is appellee in an appeal from the small claims court to the superior court.

Under present law the plaintiff must accept the judgment of the small claims court as final, but the defendant may appeal. (*See AB 2632—Chapter 1982.*)

CHAPTER 341

ASSEMBLY BILL 2632 (Sumner)

An act to amend Section 117j of the Code of Civil Procedure, relating to unlawful detainer proceedings in small claims court.

Amended in Senate June 16, 1959.

As enacted into law, the Legislative Counsel summarized the bill as follows:

As amended in the Senate on June 16, and as enacted into law, also included the provision that "No fee shall be charged in the superior court upon the filing of any document or paper by the plaintiff in the small claims action." (*See SB 37—Chapter 341.*)

CHAPTER 1982

SENATE BILL 39 (Richards)

An act to add Section 117jj to the Code of Civil Procedure, relating to appeals from small claims courts.

Committee counsel offered the following comments on the bill as introduced:

Provides for the dismissal of appeals from small claims court where appeal is not brought to trial within one year.

CHAPTER 342

SENATE BILL 206 (Collier)

An act to add Section 117n to the Code of Civil Procedure, relating to appeals from judgments of small claims courts.

Committee counsel offered the following comments on the bill as introduced:

Provides for notice of the time and place of trial in the superior court in matters involving appeals from the small claims court.

CHAPTER 183

SENATE BILL 457 (O'Sullivan)

An act to amend Section 117p of the Code of Civil Procedure, relating to fees in small claims courts.

The Legislative Counsel's summary of the measure, as introduced, follows:

Imposes a \$1 fee for the issuance of a writ of execution by a small claims court and increases the fee for mailing an affidavit for the commencement of an action in such courts from 75 cents to \$1.

CHAPTER 1353**ASSEMBLY BILL 284 (House and Hanna)**

An act to amend Section 117p of the Code of Civil Procedure, relating to action in small claims courts.

This bill was enacted into law as introduced. The Legislative Counsel's summary of the measure follows:

Increases from 75 cents to \$1 the fee charged in small claims courts for each defendant to whom a copy of plaintiff's affidavit is mailed.

CHAPTER 106**SENATE BILL 782 (Farr)**

An act to amend Section 117r of the Code of Civil Procedure, relating to small claims courts.

Committee counsel offered the following comments on the bill as introduced:

Merely allows a cross-complaint by a defendant in a small claims action to be in the same jurisdictional amount as that allowed the plaintiff.

Amended in Assembly May 22, 1959.

CHAPTER 1146**SENATE BILL 883 (Thompson)**

An act to add Section 34.1 to the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405, Statutes of 1951), relating to judicial actions or proceedings by or against the district.

Committee counsel offered the following comments on the bill as introduced:

The bill, as introduced, would exempt the provisions of C.C.P. 170, subdivision 6 in actions involving the Santa Clara County Flood Control District. The prohibition referred to disqualifies a superior court judge from hearing actions of this type in the county of his residence.

The committee felt there was no longer any reason for this subdivision 6 for many cases covered for the reason that we now have in the law provisions for the mandatory disqualification of judges which should be sufficient protection against any abuses.

Amended in the Senate April 20, 1959.

An act to add Section 34.1 to the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405, Statutes of 1951) AMEND SECTION 170 OF THE CODE OF CIVIL PROCEDURE, relating to judicial actions or proceedings by or against the district.

Remained in Assembly Committee on Judiciary—Civil.

ASSEMBLY BILL 1449 (Biddick)

An act to repeal Section 170.5 of the Code of Civil Procedure, relating to peremptory challenges of judges.

Committee counsel offered the following comments on the bill as introduced:

The bill is recommended by the Judicial Council and would repeal Section 170.5 C.C.P., which has heretofore been declared unconstitutional. This was the former section for peremptory challenge of judges without any cause. It was declared unconstitutional by a later enacted section providing for a pro forma application which was declared constitutional.

CHAPTER 1099

SENATE BILL 684 (Beard et al.)

An act to amend Section 170.6 of the Code of Civil Procedure, relating to disqualification of judges on the grounds of prejudice.

Committee counsel offered the following comments on the bill as introduced:

Extends proceedings for peremptory disqualification of judges to include criminal as well as civil matters.

CHAPTER 640

ASSEMBLY BILL 2316 (George A. Willson)

An act to amend Section 199 of the Code of Civil Procedure, relating to competency to act as a juror.

Amended in Assembly May 8, 1959.

Committee counsel offered the following comments on the bill as amended:

Limits the service of a trial juror to 10 days instead of the present 20 days. It also is made to apply to counties having population in excess of 400,000 people as distinguished from the present provision which applies to counties having a population in excess of 300,000.

Other changes were made in final bill.

Amended in Senate May 25, 1959.

This measure was pocket-vetoed by the Governor for the following reason:

"Increased administrative costs in obtaining jury panels without providing compensating benefits."

SENATE BILL 759 (Grunsky)

An act to amend Section 200 of the Code of Civil Procedure, relating to persons exempt from liability to act as jurors.

Committee counsel offered the following comments on the bill as introduced:

Deals with exemption from jury duty insofar as military personnel is concerned.

Present law exempts officers and the bill adds additional language to make it clear that enlisted personnel are also included in the exempt category.

CHAPTER 1406**ASSEMBLY BILL 927 (Bradley)**

An act to add Section 201a to, and to amend Section 225 of, the Code of Civil Procedure, relating to trial juries.

Amended in Senate April 29, 1959.

Committee counsel offered the following comments on the bill as amended:

Amends the procedure for the handling of jurors after they have been summoned to attend.

After the original summons to the individual the exact time and place of his appearance may be given to him either orally or in writing or by telephone or telegraph. The author explained the need for the bill was to prevent jurors from having to constantly reappear at the courtroom and then being sent home because there was no case ready for them to try.

The bill also adds a new section which allows the Jury Commissioner to excuse jurors from service where such excuse is authorized under present law. In other words, permitting the Jury Commissioner to excuse the juror from serving for statutory reasons instead of requiring that this be done by the court.

CHAPTER 759**SENATE BILL 635 (Short)**

An act to add Section 242a to the Code of Civil Procedure, relating to grand juries. (Filling vacancies.)

Amended in Senate April 8, 1959.

CHAPTER 714**ASSEMBLY BILL 1094 (Bradley)**

An act to add Article 13 (commencing with Section 255) to Chapter 1, Title 3, Part 1 of the Code of Civil Procedure, relating to the drawing of juries.

Amended in Senate April 29, 1959.

Committee counsel offered the following comments on the bill as amended:

This measure permits the use of mechanical or electronic equipment for the selection and drawing of jurors by lot.

In response to a question, Santa Clara County Counsel, appearing on behalf of the bill, stated that it was not intended in any way to apply to the actual impaneling of a jury but only to the selection of the original jury panel from which trial jurors are later selected.

CHAPTER 828

ASSEMBLY BILL 627 (Francis)

An act to add Section 329.5 to the Code of Civil Procedure, relating to the statute of limitations.

Amended in Senate April 27, 1959.

Committee counsel offered the following comments on the bill as amended:

Basically, the bill seeks to extend to chartered cities the same 30-day limitation on actions to contest the validity of assessment proceedings that now exist in general law cities, and allows the city, by ordinance, to provide for a longer period if desired.

CHAPTER 1007

ASSEMBLY BILL 1269 (Hanna)

An act to add Section 337a to the Code of Civil Procedure, relating to the statute of limitations on certain types of contracts and book accounts.

Amended in the Senate May 11, 1959.

Committee counsel offered the following comments on the bill as amended:

Generally, C.C.P. 337 provides for a four-year statute of limitations on open book accounts and the period begins to run from the date of the last entry. Accordingly, it becomes necessary to determine the nature of a book account in order to take advantage of this type of statute of limitations.

This bill seeks to define the term book account and adds to the commonly accepted definition "card or cards of a permanent character or other records kept in any reasonably permanent form and manner."

The Building Materials Dealers Credit Association appeared in favor of the bill.

CHAPTER 1010

ASSEMBLY BILL 2700 (Backstrand)

An act to amend Section 349.1 of the Code of Civil Procedure, relating to improvement districts. (Validation Statute)

CHAPTER 1995

ASSEMBLY BILL 168 (MacBride)

An act to amend Section 352 of the Code of Civil Procedure, relating to the statute of limitations.

Committee counsel offered the following comments on the bill as introduced: Clarifies provision to the effect that the statute of limitations does not run on a minor's cause of action during the period of minority.

CHAPTER 192

ASSEMBLY BILL 2220 (Bradley)

An act to amend Sections 396 and 399 of the Code of Civil Procedure, relating to payment of costs and fees on transfer of action to another court.

CHAPTER 1487**SENATE BILL 27 (Shaw)**

An act to amend Section 409 of the Code of Civil Procedure, relating to notice of pendency of actions affecting title to real property.

Committee counsel offered the following comments on the bill as introduced:

This bill was sponsored by the California Land Title Association. It provides in substance that notice of an action concerning real property which is pending in a United States District Court may be recorded and indexed in the same manner as a lis pendens involving state court actions.

Upon the recording of such notice of a federal action, purchasers and encumbrancers are deemed to have notice thereof in the same manner as if the action had been commenced in a state court.

The bill was suggested for the reason that Congress has recently authorized such proceedings and has provided in general that constructive notice of these federal actions involving real estate must be given in the same manner as if the action were filed in the state court *where a state law authorizes such procedure.*

This bill is the State's authorization to comply.

Explanation furnished to the committee by the California Land Title Association follows:

"Congress has amended Chapter 125 of Title 28 U.S. Code by adding a new section 1964 which reads as follows [*italics added*] :

" 'S 1964. Constructive notice of pending actions.

" 'Where the law of a State requires a notice of an action *concerning real property* pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, *and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner, or in the same place,* those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State.'

"The amending Act, Public Law 85-689; 72 Stats. 683, approved August 20, 1958, provides that the amendments shall only be effective with respect to actions commenced more than 180 days after the date of enactment of the Act.

"While our present CCP 409 requires the recording of 'a notice of pendency of the action', with respect to actions in California courts *affecting the title or the right of possession of real property*, in order that a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of its pendency, the section does not

purport to require such notice with respect to actions in any Federal court, and it has been held that the section does not apply to such actions. In order to give effect, in California, to the new Congressional Act, it is desirable that Section 409 be amended so that 'such law authorizes a notice of an action concerning real property pending in a United States district court to be...recorded or indexed...in the same manner or in the same place' as required with respect to actions concerning real property pending in a California court. It is also noted that the new U.S. Statute speaks of 'an action *concerning real property*', which may or may not amount to the same thing as 'an action affecting the title or the right of possession of real property'. It is desirable that Section 409 be further clarified so that it applies to an action 'concerning real property'. As a basis for discussion it is suggested that CCP 409 be amended by inserting the underlined words, so that the section would read as follows:

"The language of the proposed amendment has been chosen in an effort to adhere as closely as possible to the language of the congressional act."

CHAPTER 382

SENATE BILL 99 (Grunsky)

An act to amend Section 410 of the Code of Civil Procedure, relating to service of process.

Amended in Senate February 25, 1959.

Committee counsel offered the following comments on the bill as amended:

Basically, the bill seeks to provide a method whereby there shall appear on the face of the copy of the complaint served on a person a statement as to the capacity in which he is served, that is, whether he is a representative of a partnership, corporation, or as an individual, or both as an individual and a representative of a corporation or a partnership.

The bill, as introduced, further provides that in the event no such notice appears on the copy of the complaint served, then it shall be conclusively presumed that the individual is served in his individual capacity only.

The bill was amended on February 25, to delete the reference to the notice of capacity in which a person was served from the copy of the complaint and to provide that such notice shall appear on the copy of the summons that is served. The amendments of February 25 further provide that when service is against a corporation or partnership and such fact does not appear on the copy of the summons, no default may be taken against such corporation or partnership, and a similar provision is made if service is on the individual but notice of that fact does not appear on the copy of the summons. This provision is a substitute for the provision in the original bill which created a conclusive presumption that there would be service only upon the party or parties specially provided in the notice attached to the complaint.

Discussion on this bill before the subcommittee raised several questions primarily involving proof of the capacity in which an individual,

corporation, or partnership was served. The questions raised were along the following lines:

1. Requirements of special notice to be inserted on the copy of the summons served makes no reference to what, if any, additional information should appear on the original summons which, presumably when filed with an affidavit of service on various defendants creates the basis upon which default judgments can be taken.

2. There appears to be no other document containing an authentic copy of the material appearing upon each of the copies of the summons served so that there would be no record of what the copy of the summons in fact said.

3. It was suggested at the committee meeting that the affidavit of service of the copy of the complaint and summons could set forth the capacity in which an individual was served and presumably also the requirement could be made that in the affidavit of service there should be contained an exact statement of the material appearing on the copy of the summons served upon each of the defendants.

Generally it was to cope with and further discuss the problems mentioned briefly above that the bill was continued to this date for further consideration.

Amended in Senate March 31, 1959.

Amended in Assembly May 15, 1959.

As enacted into law, the Legislative Counsel summarized the bill as follows:

Requires that when corporation or associates conducting business under a common name is served with summons and complaint, a notice must appear on copy of summons served advising individual served on behalf of such corporation or associates. Requires that when such person is being served as an individual, as well as on behalf of corporation or associates, notice shall so state. Provides in absence of such notice, no default may be taken against corporation or associates.

CHAPTER 792

ASSEMBLY BILL 1138 (Biddick et al.)

An act to amend Section 537.5 of the Code of Civil Procedure, relating to attachments.

Committee counsel offered the following comments on the bill as introduced:

Generally, the bill deals with attachments and amends existing law which requires that attachment proceedings shall not be made public until after the service of the writ. The bill would limit this requirement of secrecy to cases where the plaintiff so requests in writing. It would nevertheless make the file itself available to any party named in the complaint.

Amended in Senate May 28, 1959.

CHAPTER 1073

ASSEMBLY BILL 1037 (Hanna)

An act to amend Section 538 of the Code of Civil Procedure, relating to attachments. (Minimum amounts involved.)

Amended in Assembly April 27, 1959.

Amended in Senate May 26, 1959.

Amended in Conference June 16, 1959.

CHAPTER 1872**ASSEMBLY BILL 1151 (Hanna)**

An act to amend Section 539 of the Code of Civil Procedure, relating to attachments.

Committee counsel offered the following comments on the bill as introduced:

Under present law the undertaking on attachment shall be not less than \$50 nor more than the amount claimed by the plaintiff, the exact sum to be fixed by the clerk or judge of the court in which the action is pending.

The bill changes this requirement to a specific one-half of the principal for which the writ is to be issued, but not less than \$50.

Provision is also made for an ex parte order upon application of the plaintiff to require a lesser undertaking, but in no event less than \$50. It also permits, on motion of the defendant, that the court may order the amount of the undertaking increased providing such increase does not exceed the amount for which the writ has been issued.

CHAPTER 829**ASSEMBLY BILL 1153 (Hanna)**

An act to amend Section 542 of the Code of Civil Procedure, relating to the manner in which property is attached.

Committee counsel offered the following comments on the bill as introduced:

Generally, the requirement is added that when wages are to be attached the notice of attachment must incorporate the provisions of C.C.P. 690.11 (relating to exemptions of wages from attachment) and the bill further provides that the notice shall also state that the debtor must in order to avail himself of the exemption file an affidavit with the levying officer as provided in the code.

Query: Is the language on Page 5 containing the above amendment sufficiently clear with regard to the one-half of the debtor's wages which are exempt without his filing a claim of exemption under Section 690.11?

NOTE: Clarifying language change was made in the bill amended May 21, 1959.
Amended in Senate May 21, 1959.

CHAPTER 1008

ASSEMBLY BILL 1270 (Hanna)

An act to amend Sections 553 and 946 of the Code of Civil Procedure, relating to attachments.

Committee counsel offered the following comments on the bill as introduced:

The bill provides in general as follows:

1. Present law makes provisions for the discharge of the attachment where the defendant recovers a verdict and no appeal is perfected by the plaintiff. This bill would continue the attachment upon the filing of an undertaking in the event of a motion made for vacation of judgment or for judgment notwithstanding the verdict or for a new trial after judgment for the defendant.

2. Provision is also made for the court upon motion of the defendant to increase the amount of the original undertaking in the event an appeal is filed.

3. Under present law an appeal does not continue in force an attachment unless an undertaking is filed in twice the amount of the debt claimed.

This bill amends that section by including a similar provision as to motions for vacation of judgment or for judgment notwithstanding the verdict or for a new trial. However, the amount of the undertaking to continue the attachment will be in the amount previously fixed by the court upon motion of the defendant after entry of judgment and before perfection of the appeal, but if no such order has been made, then in double the amount of the debt claimed. Further provision is made if the defendant is not satisfied with the amount of the undertaking. In either event he may move the trial judge for an increase within 60 days after the appeal is perfected.

CHAPTER 833**SENATE BILL 62 (Richards)**

An act to amend Section 581d of the Code of Civil Procedure, relating to the dismissal of an action. (Procedure.)

CHAPTER 346**SENATE BILL 98 (Grunsky)**

An act to amend Section 631 of the Code of Civil Procedure, relating to waiver of jury trial.

Committee counsel offered the following comments on the bill as introduced:

This bill, as introduced, provided that a jury trial as to an issue of fact is waived, in the superior and municipal courts, by failure to deposit one day's jury fees 20 days, rather than 10 days, prior to the date set for trial.

Amended in Assembly May 1, 1959.

NOTE: The bill was amended in the Assembly on May 1 and, as enacted into law, provides that the deposit must be made within 14 days, rather than 10 days, or 20 days as was proposed under the original bill.

CHAPTER 525

SENATE BILL 216 (Beard and Regan)

An act to amend Sections 632 and 634 of the Code of Civil Procedure, relating to civil actions. (Additional requirements finding of fact.)

Amended in Senate March 25, 1959.

CHAPTER 637**SENATE BILL 164 (Cobey)**

An act to amend Sections 659, 663a, and 953d of the Code of Civil Procedure, relating to procedure after trial in civil cases.

Amended in Senate April 8, 1959.

Committee counsel offered the following comments on the bill as amended:

The measure deals with the time within which a motion may be made for a new trial and generally requires that this motion must be made within 30 days after the entry of the judgment or 10 days after notice of such entry, whichever is earlier. Present law requires that the motion may be made within 10 days after receiving notice but is silent upon what happens if no such notice of entry of judgment is given.

The bill as originally proposed started the running of the 10-day period from the time of "receiving" the notice. This is similar to present law but the subcommittee of the Senate Committee on Judiciary felt that the situation could be improved by an amendment causing the 10-day period to run from the time of giving such notice, either by personal service or through service by mail, the point being that the date of receiving notice is somewhat difficult of proof. The bill as amended on April 8 contains this recommendation.

This measure was sponsored by the California Law Revision Commission, and the following explanation of the bill is an excerpt from the commission's report entitled "Recommendation and Study Relating to Time Within Which Motions for New Trial May Be Made, November 1958":

"Section 659 of the Code of Civil Procedure authorizes a notice of intention to move for a new trial to be filed, *inter alia*, 'within ten (10) days after receiving written notice of the entry of the judgment.' Section 663a of the code authorizes a notice of intention to move to set aside and vacate a judgment or decree based upon findings of fact made by the court or the special verdict of a jury to be filed 'within ten days after notice of the entry of judgment.' Under both of these sections a motion is timely even though made many months or years after judgment has been entered and the time within which an appeal may be taken has passed, if the moving party can show that he was not given written notice of entry of the judgment by the prevailing party. It has been held that notice received from the clerk of the court is not sufficient to start the moving party's time running under Section 659; the same is presumably true under Section 663a.

"The Commission believes that this situation is undesirable. The orderly administration of justice requires that motions for new trial and to set aside and vacate judgments be made and disposed of within a reasonably short time after a case is decided. While the party against whom the motion is made can be said to have brought the difficulty on

himself by failing to give notice of entry of judgment, the State has a larger interest in the matter than that of assessing the blame for long-delayed motions between the parties or their counsel.

"The Commission recommends, therefore, that Sections 659 and 663a of the Code of Civil Procedure be revised to require the motions to which they relate to be made within 30 days after entry of judgment or whichever is earlier. Under this rule the prevailing party will be able, as at the present time, to shorten the time to move for a new trial or within 10 days after receipt of written notice of entry of judgment, whichever is earlier. Under this rule the prevailing party will be able, as at the present time, to shorten the time to move for a new trial or to vacate a judgment by giving prompt notice of the entry of judgment. Should he fail to give such notice the time to move will expire 30 days after the entry of judgment.

"The Commission does not believe that these proposed amendments will impose undue hardship on the moving party. As the report of its research consultant shows, at least 12 jurisdictions have a similar rule with respect to motions for new trial and most of them give the moving party only 10 days or less after entry of judgment (or other event of record) to make the motion. Moreover, the losing party must keep track of the date of entry of judgment in any event inasmuch as his time to appeal runs from that date.

"The Commission also recommends that Section 953d of the Code of Civil Procedure, which provides that a notice of entry of judgment required by Section 659 must be given in writing unless written notice be waived in writing or by oral stipulation made in open court, be amended to make it applicable also to notices of entry of judgment required by Section 663a. The desirability of this amendment was suggested by the State Bar in connection with its review of the Commission's recommendation and study on this subject."

CHAPTER 469

SENATE BILL 163 (Cobey)

An act to amend Section 660 of the Code of Civil Procedure, relating to motions for new trials.

This bill was sponsored by the California Law Revision Commission, and the following explanation of the measure is an excerpt from the commission's report entitled, "Recommendation and Study Relating to the Effective Date of an Order Ruling on a Motion for New Trial," February 1, 1957:

"Section 660 of the Code of Civil Procedure (hereinafter referred to as 'Section 660') is applicable in superior and municipal court actions. It provides that a motion for a new trial is denied by operation of law upon the expiration of 60 days from the date of certain events specified therein unless the motion has theretofore been 'determined' by the court. The question frequently arises of precisely what must be done within this 60-day period to 'determine' the motion. The matter is of particular importance when the question is whether a court which intended and attempted to *grant* a motion for a new trial within the period actually did so, thus precluding its denial by operation of law.

"Several earlier cases indicate that a motion for a new trial is 'determined' within the meaning of Section 660 if (1) the judge pronounces

the order orally in open court in the county of trial within the 60 days, whether or not the order is entered in the permanent minutes within the period; (2) the judge signs a written order within the 60 days outside the county of trial, whether or not the order is filed within the period; or (3) the judge pronounces an order orally in chambers in the county of trial and the order is entered in the permanent minutes within the period. While there are no cases so holding, it would seem to follow from these earlier cases that a motion for new trial would also be 'determined' if (4) the judge signs a written order in the county of trial within the 60 days, whether or not it is filed within the period; or (5) the judge pronounces the order orally in chambers outside the county of trial and the order is entered in the permanent minutes within the 60-day period.

"However, as is shown in the research consultant's report, three recent cases have thrown considerable doubt on the earlier cases referred to and have indicated that a motion for a new trial is denied as a matter of law under Section 660 unless one of two things is done within the 60-day period: (1) an order ruling on the motion is made and is entered in the permanent minutes or (2) a written order is signed by the judge and filed with the clerk.

"The commission believes that the uncertainty created by this inconsistency between the earlier and later cases is undesirable and recommends that a statute be enacted specifying precisely what must be done within the 60-day period prescribed by Section 660 to have an effective ruling on a motion for a new trial and to prevent denial of the motion by operation of law. It is important for parties, judges, counsel, and court clerks that the law on this matter be perfectly clear.

"The commission recommends that Section 660 be revised to provide that a motion for a new trial is determined within the meaning of the section when, within the 60-day period specified therein, (1) an oral order ruling on the motion is first entered in the minutes or (2) a written order ruling on the motion is signed by the judge. This recommendation is based on the commission's conclusion that an event must be selected as critical which can be proved by a writing rather than by resort to the recollection of the judge as to when he ruled on the motion. In the case of an oral order this is supplied by the clerk's entry in either his temporary or 'rough' minutes or the permanent or 'smooth' minutes of the court. In the case of a written order it is provided by the signing of the order which is routinely dated as of the day upon which it is signed.

"The commission also recommends that Section 660 provide that an order ruling on a motion for a new trial is effective when entered in the minutes or signed even though it directs that a written order be prepared, signed, and filed. The commission recognizes that under Rule 3(a) of the Rules on Appeal the time for appeal does not start to run in such a case until the signed order is filed. However, this proposed difference in the rules is justified because of the different purposes which they serve. It is desirable to make as early an event in the process of decision as possible a 'determination' within the meaning of Section 660 to avoid an unintended denial of the motion by operation of law

when later events relating to the order occur after the 60-day period has elapsed. On the other hand, it is desirable to make a relatively late event relating to the order critical for the purpose of starting the time for appeal to run in order to give maximum opportunity to file an appeal."

CHAPTER 468**SENATE BILL 3 (Beard)**

An act to add Section 674.5 to the Code of Civil Procedure, relating to recordation of writs of execution.

Amended in Senate April 8, 1959.

An act to add Section 674.5 to the Code of Civil Procedure, relating to recordation of writs of execution JUDGMENT LIENS.

Committee counsel offered the following comments on the bill as amended:

This measure provides a system whereby recording of a certified copy of a judgment for alimony child support creates a continuing lien upon real property in the county for payments on the judgment as they become due.

Amended in Senate May 27, 1959.

CHAPTER 2087**ASSEMBLY BILL 1586 (Thelin)**

An act to amend Sections 676, 677 and 680½ of the Code of Civil Procedure, relating to undertakings in actions to set aside fraudulent transfers and conveyances.

CHAPTER 1472**SENATE BILL 275 (Grunsky et al.)**

An act to amend Sections 682.1 and 682.2 of the Code of Civil Procedure, relating to writs of execution.

This bill was sponsored by the Senate Interim Committee on Judiciary.

Amended in Senate March 2, 1959.

Committee counsel offered the following comments on the measure as amended March 2, 1959:

This bill clarifies the language of writ of execution by which a money judgment is enforced by expressly providing that:

1. All interest following a judgment is to be calculated upon the unpaid balance of the judgment.

2. Part payments by the judgment creditor are to be first credited against accrued interest and costs.

3. Judgment creditor must file an affidavit in order to claim interest which has accrued after entry of the judgment but prior to issuance of the writ of execution.

4. Interest on the judgment which accrues after issuance of the writ is to be computed by the levying officer and added to the amount which was due at the time the writ was issued.

Proposed by District Attorney of Ventura County to correct confusion in present law.

Amended in Senate March 20, 1959.

Amended in Assembly May 1, 1959.

Amended in Assembly May 5, 1959.

As enacted into law, the Legislative Counsel summarized the bill as follows:

Requires court clerk issuing writ of execution to compute and enter on writ of execution the amount of interest that will accrue daily after date of issuance, and requires levying officer to compute amount of interest that has accrued at such rate to date of levy. Provides that such accrued interest and commissions and costs of levying officer shall be included in determining total amount to be satisfied by execution.

Modifies prescribed form of writ to accord with above provision re computation of interest after date of issuance of writ. Adds to form a provision that any credits noted on the form are to be credited first against total accrued costs and accrued interest, with any excess credited against the judgment entered. Makes other technical changes in form.

CHAPTER 534

ASSEMBLY BILL 2820 (Biddick)

An act to amend Section 688 of the Code of Civil Procedure, relating to execution of judgments.

Committee counsel offered the following comments on the measure as introduced:

This bill is designed to prohibit levy or sale on execution of a license issued by the State for any profession, business or activity.

At present, courts have held that alcoholic beverage licenses are subject to execution as personal property transferable for a consideration. Transfer of a license, however, requires investigation and approval of the transferee by the department.

Such licenses cannot at present be used as security for a debt. They are required by law to remain on the premises at all times, but under the present rule, they have been seized and removed under court order.

Introduced by request of the Department of Alcoholic Beverage Control.

CHAPTER 2140

ASSEMBLY BILL 1143 (Biddick et al.)

An act to amend Section 689b of the Code of Civil Procedure, relating to execution of civil judgments.

This bill was sponsored by the State Bar of California.

Committee counsel offered the following comments on the measure as introduced:

Extends to mortgages the same rights now held by a levying creditor to pay a third party claim arising under a conditional sales contract. In other words, when the creditor levies he may now make tender to the mortgagee upon the presentation of a third party claim to the property attached based upon a mortgage as well as upon a third party claim based upon a conditional sale.

CHAPTER 1460

SENATE BILL 785 (Farr)

An act to amend Section 689b of the Code of Civil Procedure, relating to attachment and execution.

Committee counsel offered the following comments on the bill as introduced:

Deals with third party claims against motor vehicles which have been attached by a creditor. Provision is made under present law for a deposit by the plaintiff to offset the demand of the third party or in lieu of such deposit an undertaking. Until such payment or undertaking is made by the plaintiff the property cannot be sold under the levy but after it has been made it can be sold. Also, where the third party claimant fails to file his claim within 30 days after personal service upon him the property may be sold under the levy.

Under present law the service upon the third party claimant must be made by the levying officer and his certificate filed in the action before the sale. Under the amendment the written demand can be filed by any serving officer who need not necessarily be the original levying officer but may be any sheriff, marshal or constable whose office is closer to the place of service.

In other words, the purpose of the amendment appears to be to allow the levying officer to forward these levying documents to a sheriff or constable whose office is closer to that of the third party claimant.

CHAPTER 1147**SENATE BILL 794 (Dolwig)**

An act to amend Section 690.11 of the Code of Civil Procedure, relating to exemptions from attachment.

Amended in Senate April 30, 1959.

Committee counsel offered the following comments on the bill as amended:

It prohibits the levying of an attachment on earnings of the defendant for the purpose of securing payment of a sum due on a retail installment contract unless the defendant has defaulted on two or more successive payments.

Amended in Senate May 25, 1959.

An act to amend ~~Section~~ SECTIONS 538 AND 690.11 of the Code of Civil Procedure, relating to exemptions from attachment.

Amended in Assembly June 12, 1959.

Remained in Assembly Committee on Judiciary—Civil.

SENATE BILL 30 (McCarthy)

An act to add Section 690.235 to the Code of Civil Procedure, relating to exemptions from attachment and execution.

Amended in Senate February 25, 1959.

Amended in Senate March 6, 1959.

Committee counsel offered the following comments on the measure as amended:

As last amended, and as enacted into law, the bill provides that the account of an inmate in a state or local correctional facility shall be

exempt from attachment and execution to the amount of \$40, without the necessity of filing a claim for exemption as provided in Section 690.26.

The bill, as introduced, provided the funds to be exempt not exceed \$15, and the amendment increasing this sum to \$40 was made for the reason that it is the amount given a released prisoner if he has no other funds and therefore the exemption should apply to \$40 of his own funds.

CHAPTER 399**ASSEMBLY BILL 1617 (Burton)**

An act to amend Section 690.24 of the Code of Civil Procedure, relating to exemptions from attachment and execution. (Motor vehicles.)

Amended in Assembly May 1, 1959.

CHAPTER 1474**ASSEMBLY BILL 1181 (Kilpatrick et al.)**

An act to amend Section 692 of and add Section 692b to the Code of Civil Procedure, relating to notice of sale of property.

Amended in Assembly March 30, 1959.

An act to amend Section 692 of and add Section 692b to the Code of Civil Procedure, relating to notice of sale of property.

Committee counsel offered the following comments on the bill as amended:

Provides that in execution sales after a default judgment the real property to be sold must be posted at least 20 days prior to the sale.

This is the present requirement for sales of real property under mortgages or deeds of trust.

As originally submitted the bill contained the further requirement that in cases of execution sales notice should also be given to the judgment debtor by the officer conducting the sale, by mailing a true copy to his last known address, however, this additional requirement was deleted.

CHAPTER 1277**ASSEMBLY BILL 275 (Francis)**

An act to amend Section 717.1 of the Code of Civil Procedure, relating to proceedings supplemental to execution. (Payment of mileage.)

Amended in Assembly February 20, 1959.

CHAPTER 196**ASSEMBLY BILL 1406 (Masterson)**

An act to amend Section 753 of, and to add Section 753.1 to, the Code of Civil Procedure, relating to actions for partition of property.

A.B. No. 1406 was sponsored by the California Land Title Association. Committee counsel offered the following comments on the bill as introduced:

Generally, the bill provides that in partition actions it is not necessary to name lessees of adjacent property or the holders of oil pool

arrangements who may be the owners of adjacent property. In other words, it limits the required service in partition actions to those having an interest in the property being partitioned.

CHAPTER 741**ASSEMBLY BILL 2136 (Thelin)**

An act to amend Section 784 of the Code of Civil Procedure, relating to partition sales of property.

Committee counsel offered the following comments on the bill as introduced:

Makes technical clarifying change.

CHAPTER 1320**SENATE BILL 61 (Richards)**

An act to amend Section 1013a of the Code of Civil Procedure, relating to proof of service by mail.

Amended in Senate March 18, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill originated in the office of the County Clerk of Los Angeles County, and it was explained that in cases where the clerks' offices are required to serve documents by mail, a certificate of such service, as provided by the bill, was more satisfactory than an affidavit or other evidence of such service.

The bill was amended for the purpose of clarification to make certain that the new subdivision (3) applied only to cases of service by clerks and was not intended to apply as a substitute for other types of private service.

CHAPTER 345**SENATE BILL 161 (Cobey)**

An act to amend Section 1054.1 of the Code of Civil Procedure, relating to continuances in judicial and administrative proceedings.

CHAPTER 985**ASSEMBLY BILL 1205 (Bradley)**

An act to amend Section 1107 of the Code of Civil Procedure, relating to prerogative writs. (Time of service.)

Amended in Assembly April 10, 1959.

Amended in Assembly April 17, 1959.

CHAPTER 737

SENATE BILL 814 (Regan et al.)

An act to add Section 1193 to the Code of Civil Procedure, relating to mechanics' liens.

Amended in Senate April 9, 1959.

Committee counsel offered the following comments on the bill as amended:

This is the so-called "Notice Bill" in mechanics' lien cases and was the subject of extensive interim committee hearings described in detail elsewhere in this report.

Amended in Senate April 16, 1959.

Amended in Senate May 1, 1959.

Amended in Assembly June 16, 1959. (Record expunged whereby amendments were adopted on June 16.)

CHAPTER 2034**ASSEMBLY BILL 2339 (Cusanovich)**

An act to amend Section 1193.1 of the Code of Civil Procedure, relating to mechanics' liens. (Notice of completion by transferee of owner.)

Amended in Assembly May 15, 1959.

CHAPTER 1549**ASSEMBLY BILL 1547 (Hanna)**

An act to amend Section 1193.2 of the Code of Civil Procedure, relating to claims of liens.

Committee counsel offered the following comments on the bill as introduced:

This bill deals with the release of liens filed under the provisions of the mechanics' lien law.

Under present law the owner of the property upon which the lien is filed may cause the release of the same by posting a bond. This bill simply provides that either the general contractor or subcontractor can likewise post a bond to cause a lien to be released.

The bill is recommended by the California Land Title Association.

CHAPTER 1013**ASSEMBLY BILL 1139 (Biddick et al.)**

An act to amend Section 1198.1 of, and to add Section 1198.2 to, the Code of Civil Procedure, relating to mechanics' liens.

Amended in Assembly April 10, 1959.

Committee counsel offered the following comments on the measure as amended:

This bill deals with the requirement of the filing of a lis pendens in mechanics' lien foreclosure actions.

Under present law the lis pendens is required to be filed at the time of the commencement of the action. This is a comparatively recent amendment and some courts have considered it to be jurisdictional which in effect deprives the plaintiff of his lien unless he files the lis pendens as well as the complaint. The district court of appeals, however, has held that the matter is not jurisdictional.

This bill makes the filing of a lis pendens optional and provides also that it will affect only encumbrancers or purchasers for value. In other words, that the failure to file will not affect the lien rights.

CHAPTER 1176

SENATE BILL 234 (Farr)

An act to add Chapter 2.5 (commencing at Section 1203.50) to Title 4, Part 3 of the Code of Civil Procedure, relating to oil and gas liens.

Amended in Senate April 20, 1959.

Committee counsel offered the following comments on the bill as amended:

This is the so-called "Oil and Gas Lien Act" which was presented to the 1957 Session of the Legislature and at that time referred by the Senate Judiciary Committee for interim study.

Hearings were held during the interim and objections to the bill were raised by title company representatives as well as the major oil companies.

Amended in Senate April 28, 1959.

Amended in Senate May 21, 1959.

Committee counsel offered the following comments on the bill as amended:

As amended in Senate May 21, 1959, the bill has been substantially amended from its 1957 form.

The following explanation of the purpose of the bill was furnished by the legislative representative of the Petroleum Equipment Suppliers Association of the United States, sponsors of the measure:

"Senate Bill 234 is a bill sponsored by the Petroleum Equipment Suppliers Association of the United States which is an organization representing the majority of suppliers to oil and gas leases. The organization has for years sponsored legislation in oil-producing states and has developed an oil and gas lien law which is now operative in sixteen states. The bill has had intensive study by the Senate Interim Judiciary Committee during the last two years. When originally introduced in 1957, objections were made by the major petroleum companies on the basis that the bill was too broad. It also was opposed by the title insurance companies on the same ground. During the Interim Committee study, the sponsors were requested by the Chairman of the Judiciary Committee to try to work out a middle ground that would satisfy the objectors and would still accomplish the purpose that the industry wanted. We believe that Senate Bill 234 as now amended does do this. We have been informed by representatives of the petroleum companies with whom we have worked during the last two years that the bill is satisfactory to them, and we believe at this writing that the original objections of the title insurance companies have been met.

"The bill is designed to clarify and define the mechanics' and materialmen's lien as it applies to an oil and gas lease and to obviate the difficulties which have been encountered in applying existing general mechanics' and materialmen's lien act or the mechanics' and materialmen's lien on mines to an oil and gas lease. In other words, the rights that are granted under the present mining mechanics' lien law are not adequate for industry because of the shortness of the period of time

and also because the present mechanics' lien law can work a hardship on the owners of real property. Under this law as proposed by this bill, the owner of the land's interest is not affected and the only thing the lien attaches to is the leasehold interest and the equipment at the drill-site and upon the proceeds of the gas or oil that is produced. This, of course, only applies under this law to the lessee's interest and royalty interest or owner's interest overriding royalties are not affected. The reason industry needs this bill is because of the inequity that has arisen in the applying of the present mechanics' lien law to oil and gas leases, and also the short period of time that is available because in oil and gas developments, much more time is needed for processing the type of work and making payments on credits extended by the industry. We will explain the bill at Committee hearing. Mr. Enos representing the industry as its legislative counsel has appeared before the Committee in Los Angeles and at Sacramento. Mr. Enos is one of the attorneys for the Halliburton Oil Well Cementing Company of Duncan, Oklahoma."

CHAPTER 2020

ASSEMBLY BILL 556 (Masterson and Waldie)

An act to add Section 1242.5 to the Code of Civil Procedure, relating to survey and exploration of land for reservoir purposes.

Amended in Assembly February 27, 1959.

Amended in Senate May 8, 1959.

Amended in Senate May 15, 1959.

Committee counsel offered the following comments on the bill as amended:

The bill provides a procedure whereby political subdivisions may petition the superior court for permission to undertake preliminary survey and exploration on private property to determine its desirability for reservoir purposes. Provision is made for the petitioning agency to deposit cash security with the court to compensate the owner for any damage he may suffer by virtue of this exploration.

The subcommittee of the Senate Judiciary Committee felt that in addition to the deposit securing a damage award for this preliminary survey that it should also include an amount for attorneys fees and court costs to the landowner in order that he might protect his rights in the matter.

The bill now reflects the subcommittee amendment.

Amended in Senate May 21, 1959.

CHAPTER 1865

SENATE BILL 346 (Grunsky et al.)

An act to add Section 1247b to the Code of Civil Procedure, relating to evidence in eminent domain proceedings.

Amended in Senate March 16, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill was passed by the 1957 Legislature but vetoed by the Governor on the grounds that it would cause "unwarranted complication of procedure."

The bill was referred to the Senate Interim Judiciary Committee and hearing held thereon. No major objections were raised to the bill but it was suggested that amendments be made which are now incorporated in the bill as amended March 16, 1959, which require, in effect, the request of the defendant before the defendant is required to furnish the map referred to.

CHAPTER 1373

SENATE BILL 345 (Grunsky et al.)

An act to add Section 1250a to the Code of Civil Procedure, relating to offers of purchase in eminent domain.

This is a Senate Interim Judiciary Committee bill, and was heard by the Standing Committee on March 5, at which time the committee counsel offered the following comments on the measure:

Proposes that offers of purchase in Eminent Domain be in writing. Purpose appears to be to prevent changes in offers after they have been made or accepted by the offeree-condemnee.

Introduced at 1957 Session by Senator Desmond, amended by Assembly and passed by the Assembly and Senate. Vetoed by Governor for "unwarranted complication of procedure." Referred to Judiciary Committee for interim study. Reported in Fourth Progress Report pages 243, 244.

Subcommittee action: Hearing held May 5, 1958. Department of Public Works represented and objected that bill would increase administrative duties. Subcommittee recommended approval of bill in order that condemnees might reasonably rely upon an offer.

Amended in Senate March 20, 1959.

Amended in Senate May 4, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Bill unnecessary and might create complications."

SENATE BILL 347 (Grunsky et al.)

An act to add Section 1255b to the Code of Civil Procedure, relating to eminent domain and the allowance of interest after an order is made letting the plaintiff into possession.

Committee counsel offered the following comments on the measure as introduced:

This bill providing for interest from date of order of possession in condemnation cases is self-explanatory.

Introduced at 1957 Session by Senator Desmond, passed by Legislature, vetoed by Governor with statement: "Present law adequate in providing for payment of interest from actual date of possession." Referred to Judiciary Committee for interim study. Reported in Fourth Report, page 251.

Subcommittee action: Hearing held May 5, 1958, Department of Public Works and County Counsel's Office, Los Angeles. Recommended insertion of word "effective" in line 7 and "do pass."

The Senate Interim Judiciary Committee adopted recommendation of "do pass, as amended."

CHAPTER 282

SENATE BILL 69 (Hollister)

An act to add Section 1267 to the Code of Civil Procedure, relating to the appointment of arbitration boards in condemnation actions.

(State to offer fair and equitable value.)

Amended in Senate February 25, 1959.

Amended in Senate April 14, 1959.

An act to add Section 1267 to the Code of Civil Procedure, relating to the appointment of arbitration boards in condemnation actions. RE-
RELATING TO CONDEMNATION ACTIONS.

Amended in Senate May 28, 1959.

An act to add Section 1267 to the Code of Civil Procedure, relating to condemnation actions **NEGOTIATIONS BY STATE AGENCIES WITH RESPECT TO PROPOSED ACQUISITION OF PROPERTY.**

Amended in Senate June 3, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"In Attorney General's opinion 'fair and equitable price' was uncertain and would conflict with the established principle of 'fair market value'; upon which condemnation cases are based."

ASSEMBLY BILL 16 (Miller et al.)

An act to add Chapter 7 to Title 10 of Part 3 of the Code of Civil Procedure, relating to disposition of unclaimed property.

This bill was sponsored by the California Commission on Uniform State Laws.

Amended in Assembly March 12, 1959.

An act to REPEAL SECTIONS 1460 TO 1578, INCLUSIVE, AND TO add Chapter 7 (COMMENCING WITH SECTION 1600) to Title 10 of Part 3 of the Code of Civil Procedure, relating to disposition of unclaimed property.

Amended in Assembly March 30, 1959.

An act to repeal Section 1460 to 1578, inclusive, and to add Chapter 7 (commencing with Section 1600) to Title 10 of Part 3 of the Code of Civil Pro-

AN ACT TO AMEND SECTION 1356 AND TO REPEAL SECTIONS 1460 TO 1475 AND 1478 TO 1578, INCLUSIVE, AND TO ADD CHAPTER 7 (COMMENCING WITH SECTION 1500) TO TITLE 10 OF PART 3 OF THE CODE OF CIVIL PROCEDURE, relating to disposition of unclaimed property.

Amended in Senate May 20, 1959.

SENATE BILL 352 (Farr)

An act to amend Sections 1653, 1672, 1677, 1680, 1683, 1685, and 1689 of, to repeal Sections 1661 and 1681 of, and to add Sections 1661, 1672.5, 1681, 1683.5, 1691, and 1692 to, the Code of Civil Procedure, relating to the enforcement of duties of support.

This measure was sponsored by the California Commission on Uniform State Laws.

Committee counsel offered the following comments on the bill as introduced:

This bill proposes amendments to the Uniform Reciprocal Enforcement of Support Act. The bill was partially heard by the Interim Committee in Los Angeles on December 5, 1958, and a series of amendments agreed upon. Thereafter the remaining portions of the bill were heard by the Interim Committee in Sacramento on February 17, 1959, and the committee action at that time was a recommendation of "do pass" without further amendment.

However, further checking of the bill after February 17, indicated that some of the amendments agreed upon at the Los Angeles hearing had not been included in the bill through error and that certain additional technical amendments should be made to the bill because of the omission of Part IV of the act.

Accordingly, amendments to accomplish these results were prepared.

In this connection, a letter dated February 27, 1959 from Mr. George Richter of the California Commission on Uniform State Laws, sets forth the facts with regard to the various hearings. This letter follows:

"February 27, 1959

"Re: Senate Bill No. 352—Amendments to the Uniform Reciprocal Enforcement of Support Act

"After the Senate Judiciary Committee hearing on February 17, John Bohn, Esquire, asked me to review carefully the above bill to be sure that it coincided with the action of the Senate Judiciary Committee at its hearing in Los Angeles on December 5, 1958.

"When I returned to the office, I found on my desk a memorandum from Harold Pressman, Esquire, Deputy Los Angeles District Attorney in charge of the Reciprocal Support Division, dated February 18, 1959, which calls attention to certain amendments which were approved by the Judiciary Committee at its Los Angeles meeting and which are not correctly set forth in the bill. Enclosed is a copy of that memorandum. Mr. Pressman is correct in his comments as to all of these amendments as having been approved by the Judiciary Committee at that time, with the exception that the amendments with respect to the definitions of 'rendering state,' 'registering court,' 'register' and 'certification' should be omitted from the bill because we did omit Part IV of the Uniform Act as amended, and these definitions have relationship only to that Part IV. As I think I advised you previously, Mr. Pressman presented the amendments to the Senate Committee at its Los Angeles meeting, so he is thoroughly familiar with the action there.

"All of the amendments suggested in Mr. Pressman's memorandum should therefore be made in the bill to make it coincide with the actions

of the Judiciary Committee thereon. In addition, John Bohn called my attention to a matter of grammatical structure in Section 1680(b). He suggested that the word 'diligently' appearing on page 3, line 36 of the printed bill be stricken at that place and inserted after the word 'case' in line 37 on page 3. I think this amendment should also be made.

"I am sending John Bohn a copy of this letter and would appreciate it if you would go over the matter with him and see if he agrees that these amendments should all be made and, if so, have them presented to the Committee at the time of its hearing on March 5 as being the amendments necessary to bring the bill into line with the actions taken by the Committee at its hearings on December 5 and February 17."

"February 18, 1959

"I have just studied Senate Bill 352 which you sent me for my review and comments. I submit that several changes should be made in the Bill. The Senate Judiciary Committee, at its Meeting in Los Angeles on December 5, 1958, concurred with these views.

"Section 1 (C.C.P. 1653(4)) defines 'Court.' The definition should have the words 'of this state' inserted after the words 'Superior Court.'

"Section 1 (C.C.P. 1653 (9)) defines 'prosecuting official.' This subsection should be as follows: 'Prosecuting official means the district attorney of the county in which the obligor is alleged to be present.' Attention is called to the fact that neither city attorneys nor city prosecutors are officially concerned with any proceeding in Reciprocal Support cases which are exclusively within the jurisdiction of the Superior Court.

"Section 1 (C.C.P. 1653(12)) defines 'rendering state.'

"Section 1 (C.C.P. 1653(13)) defines 'registering court.'

"Section 1 (C.C.P. 1653(14)) defines 'register.'

"Section 1 (C.C.P. 1653(15)) defines 'certification.'

"The foregoing definitions (Section 1653 (12) (13) (14) and (15)) should be deleted. These doubtless refer to a suggested chapter (so called Part IV) concerning registration of foreign support orders. Senate Bill 352 does not include any provisions for the registration of foreign support orders and therefore the definitions concerning them should not be included.

"Section 4 (C.C.P. 1672). This Section prescribes the duties of support that are enforceable under the Act. In the new Section, the phrase "including arrearages" is added. It is believed that the addition of this phrase should be strenuously opposed and that the Reciprocal Support Act should be used only for the purpose of obtaining future support (except where the state or the county is entitled to reimbursement for aid given).

"If the objectionable phrase were not eliminated, the following problems would arise:

"(1) Reciprocal Support proceedings would be burdened with issues as to the amount of arrears claimed and partial payments thereon.

"(2) The question of jurisdiction of the court which made the original order would be in issue.

"(3) The defendant's circumstances as of the date of the original order without consideration of his present circumstances, as for example, the fact that he has acquired a second family, could not be

reviewed by the court which would be bound by the original order as far as arrearage is concerned.

“(4) There would be a widespread use of the District Attorney’s Office as a collection agency for the recovery of past due alimony. This problem would be magnified should Section 15 (C.C.P. 1692) become Law. Said Section in effect provides that the remedies under the Reciprocal Support Act are applicable between the counties in California as well as between the States. If arrearages were collectible under the Act, a San Francisco divorcee, for example, could collect accumulated alimony arrearages through the Offices of the District Attorney of Los Angeles County, whereas such recovery obviously should be sought through private counsel.”

Amended in Senate March 6, 1959.

CHAPTER 710

ASSEMBLY BILL 683 (House)

An act to add Section 1744.1 to the Code of Civil Procedure, relating to children’s courts of conciliation.

Amended in Senate April 1, 1959.

Amended in Senate April 8, 1959.

Committee counsel offered the following comments on the bill as amended:

As last amended the superior court in each county having a population of 64,000 or less to appoint, with the consent and approval of the board of supervisors, one counselor of conciliation with enumerated powers and functions; one assistant commissioner of conciliation; one secretary; and such office assistants as may be required to handle clerical work. Provides salaries of these employees shall be fixed by the board of supervisors.

The bill also authorizes the judges of the superior courts, by majority vote, to dismiss any of these employees for any reason and the superior court or the board of supervisors to abolish any or all positions created under Section 1744.1.

CHAPTER 208

SENATE BILL 1321 (Dolwig et al.)

An act to amend Section 1845.5 of the Code of Civil Procedure, relating to eminent domain. (Testimony on direct examination as to comparable sales.)

Amended in Senate June 3, 1959.

Amended in Assembly June 12, 1959.

CHAPTER 2107

SENATE BILL 847 (Regan et al.)

An act to amend Section 1871 of the Code of Civil Procedure, relating to compensation of court-appointed medical expert witnesses.

This bill was sponsored by Los Angeles County Superior Court Judges and by the State Bar Association. The bill was not acted upon by the Joint Judiciary Committee on Administration of Justice.

The following explanation of the measure, as introduced was furnished by the State Bar Association legislative representative:

This bill is a proposal to amend Section 1871 of the Code of Civil Procedure in order to permit the establishing of the court-appointed medical expert plan. The proposal is being sponsored by the Los Angeles Superior Court and has been recommended by the Advisory Committee to the Joint Judiciary Committee. It has been approved in principle by the Board of Governors of the State Bar.

Under existing law, the court can appoint an expert either on its own motion or on the motion of any party, but there is no provision for the compensation of such experts in civil cases except by the parties themselves. It is contended by the sponsors of this plan that the saving in court time because of the settlement of more personal injury cases will more than justify providing for the payment of such medical experts by the county, when so ordered by the judge.

The plan was started in New York several years ago and the initial funds to get it started were provided by a private foundation. Subsequently, in New York a statute was enacted making it a county expense. The system has also been tried for several years in the City of Baltimore. According to published reports, there is some difference of opinion as to the results of the plan both in New York and Baltimore.

An opinion from the Legislative Counsel as to possible amendment of the measure, addressed to the chairman of the Senate Committee on Judiciary, follows:

“Opinion

“The bill would be held constitutional, insofar as it would be restricted to Los Angeles County, unless no state of facts could exist rationally justifying this classification. Disregarding the matter of restricting the bill to Los Angeles County, we believe the bill could be validly amended to provide that the court may order compensation of the witnesses by the county only if the board of supervisors has authorized such payment by the county.

“Analysis

“If the bill were restricted to Los Angeles County, would this be local legislation forbidden by Section 25 of Article IV of the California Constitution? Every presumption is in favor of the validity of a legislative act, and a legislative classification will not be disturbed unless it is palpably arbitrary in its nature (*In re Herrera*, 23 Cal. 2d 206). It is also true that a classification must be based upon a natural, extrinsic, or constitutional distinction having a substantial relation to the object of the legislation (*Stebbins v. Riley*, 260 U.S. 137, 69 L. Ed. 884; *San Bernardino v. Way*, 18 Cal. 2d 647). It thus appears that the classification would be held valid unless no facts could exist rationally justifying it. We do not ourselves know what the facts of the matter are.

“In our opinion the Legislature could validly provide that the board of supervisors may authorize payment of the witnesses from county funds, and that the judge may order payment by the county only if

there is prior authorization by the board (see *Ogle v. Eckel*, 49 Cal. App. 2d 599)."

Amended in Senate April 29, 1959.

CHAPTER 1408

SENATE BILL 1126 (Shaw)

An act to amend Section 1881 of the Code of Civil Procedure, relating to privileges of witnesses.

Committee counsel offered the following comments on the bill as introduced:

Generally, the bill seeks to protect employees of radio and television stations from contempt proceedings for refusing to disclose the source of news items. The amendment recommended by the subcommittee was to delete similar protections for commentaries.

Amended in Senate May 20, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"No showing by radio or television industry that statute is desired or needed."

SENATE BILL 524 (Grunsky)

An act to amend Section 1881 of the Code of Civil Procedure, relating to examination of witnesses with respect to confidential communications.

This bill was sponsored by the District Attorneys Association.

The Legislative Counsel's summary of the bill, as introduced, follows: SB 524 as introduced, Grunsky (Jud.). Information received from confidential informants.

Amends Sec. 1881, C. C. P.

Provides that in any criminal proceeding, evidence of information communicated to a police officer or other peace officer by a confidential informant shall be admissible on the issue of reasonable cause to arrest or search without requiring that the name or identity of the informant be disclosed.

Amended in Senate April 21, 1959.

Two opinions of the Legislative Counsel, addressed to Senator Hugo Fisher, a member of the Senate Committee on Judiciary, relating to SB 524, dated April 22, 1959, follow:

"You have asked that we discuss the effect of Senate Bill No. 524, as amended in Senate April 21, 1959, on the *Priestly* rule (*Priestly v. Superior Court*, 50 Cal. 2d 812) and the *Cahan* rule (*People v. Cahan*, 44 Cal. 2d 434).

"To review, first, what these cases stand for, in the *Cahan* case it was concluded that, in a criminal case, evidence obtained by unreasonable search and seizure must, on demand, be excluded. In the *Priestly* case, which involved an alleged narcotics violation, the prosecution introduced at the preliminary hearing narcotics seized incident to defendant's arrest. The officer testified that the arrest was made on the basis of information received from informers. Defendant demanded

to know the identity of the informer, but the court did not require this and did not order the testimony struck though defendant so moved. It was held that this was error. When the prosecution seeks to show reasonable cause for a search by testimony as to communications from an informer, either the identity of the informer must be disclosed when the defendant seeks disclosure or such testimony must be struck on proper motion of the defendant.

"We believe it is clear that if there had been no *Cahan* rule, the *Priestly* rule would not follow. That is, only if it is necessary to establish the legality of seizure of the narcotics sought to be introduced would it be necessary to establish the probable cause for arrest. Although the court does not expressly say so, it appears that, with the *Cahan* rule in effect, the right of defendant to have the identity of the informer disclosed or testimony as to information received from him struck, is part of due process itself, though the *Cahan* rule is not itself a rule of constitutional law. We note that in a federal case in which the *Priestly* rule is applied this is expressly stated to be so (*United States v. Keown*, 19 F. Supp. 639, 646).

"Senate Bill No. 524, as amended in Senate April 21, 1959, would add to subdivision 6 of Section 1881 of the Code of Civil Procedure the following language:

" 'In any preliminary hearing, trial or other criminal proceeding for violation of any provision of Division 10 of the Health and Safety Code, evidence of information communicated to a peace officer by a confidential informant who is not a material witness to the guilt or innocence of the accused of the offense charged shall be admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed. This section shall have no application in any civil action for redress for any injury to person or property or for the infringement of any rights.'

"It should be noted that this language is not limited to the situation in the *Priestly* case. Though we do not know in what, if any, situations the issue of probable cause for arrest would be properly raised in a narcotics case other than in connection with a claim that evidence introduced or sought to be introduced was obtained illegally, the bill at least is not by its terms restricted to that situation, and its provisions apply whenever the issue of probable cause for arrest is presented.

"This language suggests to us three questions: (1) Does it actually spell out a repeal, whether valid or invalid, of the *Priestly* rule? (2) If the answer to the first question is in the affirmative, does the language purport to repeal the *Priestly* rule without repealing the *Cahan* rule, insofar as *Priestly* applies to cases to which the *Cahan* rule applies? (3) If the answer to the second question is in the affirmative, is the bill therefore invalid?

"(1) Strictly speaking, it could be said that at present evidence of information communicated to a peace officer by a confidential informant is "admissible," without requiring disclosure of the identity of the informer, though if the evidence has been admitted, and defendant has demanded to know the identity of the informer, and the disclosure has been refused, and defendant has moved to have the testimony struck, it must be ordered struck. It thus appears that the bill, if its pur-

pose is to repeal the *Priestly* rule, does not do so very precisely. However, it probably is sufficient for this purpose, and we assume that it would be so construed.

“(2) and (3) The bill does not expressly repeal *Cahan* with respect to narcotics cases. To the contrary, it assumes the existence of an issue of probable cause. It provides, however, as we concluded in our discussion of the first question, above, that the evidence of the confidential communication stays in, though identity of the informant is not disclosed, and, thus, there can be no cross-examination on this matter. If the bill said that, in narcotics cases, evidence shall be admitted though illegally obtained, provided an officer testified that he made the arrest on the basis of information received from an informant, there would be a partial repeal of the *Cahan* rule, and this would be valid, as, of course, the Legislature can repeal that rule, and can do so selectively (*People v. Cahan*, 44 Cal. 2d 434; *Salsburg v. Maryland*, 346 U.S. 545; 98 L. ed. 281).

“The bill does not say this however. It seems to leave *Cahan* intact, but states that certain types of prosecution testimony can be admitted without affording to defendant what the court in *Priestly* deemed to be ‘a fair opportunity to rebut that testimony.’ Thus, even considering only the situation of the *Priestly* case, and disregarding any other situations in which probable cause for arrest is an issue, it seems to us that there are serious doubts about the validity of the bill.”

“Question

“(1) Can the Legislature overrule *Priestly v. Superior Court*, 50 Cal. 2d 812 by statute:

“(a) Assuming the *Cahan* rule (*People v. Cahan*, 44 Cal. 2d 434) is repealed;

“(b) Assuming the *Cahan* rule is not changed?

“(2) Is the right of a defendant under the *Priestly* rule to cross-examine a confidential informant, if his information was the sole basis for probable cause to make an arrest, a constitutional right to a fair trial?

“(3) Does the rule in the *Priestly* case permit law enforcement officers to hide the identity of a confidential informant if independent investigation verifies the information given by the informer?

“Opinion

“(1) In our opinion, if the *Cahan* rule is repealed, the *Priestly* rule can be repealed by statute. However, if the *Cahan* rule is not repealed, we believe it would be held that the *Priestly* rule cannot be repealed by statute.

“(2) The right granted by *Priestly* is, in our opinion, a constitutional right of fair trial. However, as indicated above, this right, in our opinion, comes into play in a situation such as that presented in the *Priestly* case, only when the exclusionary rule (*Cahan* rule) is in effect.

“(3) If law enforcement officers receive information from a confidential informant and, on the basis of this lead, conduct an independent investigation by which they verify the allegations of the informant, then, assuming that the facts alleged and verified constitute probable

cause for arrest, the identity of the informant need not be disclosed by the officers.

“Analysis

“In the *Cahan* case it was concluded that in a criminal case evidence obtained by unreasonable search and seizure must, on demand, be excluded. In the *Priestly* case, which involved an alleged narcotics violation, the prosecution introduced at the preliminary hearing narcotics seized incident to defendant’s arrest. The officer testified that the arrest was made on the basis of information received from informers. Defendant demanded to know the identity of the informer, but the court did not require this and did not order the testimony struck though defendant so moved. It was held that this was error. When the prosecution seeks to show reasonable cause for a search by testimony as to communications from an informer, either the identity of the informer must be disclosed when the defendant seeks disclosure or such testimony must be struck on proper motion of the defendant.

“We believe it is clear from the *Priestly* case that if the *Cahan* rule had not been in effect, there would have been no *Priestly* rule. That is, only if it is necessary to establish the legality of seizure of the narcotics sought to be introduced would it be necessary, in the situation presented in the *Priestly* case, to establish the probable cause for arrest. Although the court does not expressly say so, it appears that, with the *Cahan* rule in effect, the right of defendant to have the identity of the informer disclosed or testimony as to information received from him struck, is part of due process itself. We note that in a federal case in which the *Priestly* rule has been applied, this is expressly stated to be so (*United States v. Keown*, 19 F. Supp. 639, 646). Accordingly, it appears to us that if the *Cahan* rule remains intact, the *Priestly* rule could not be repealed by statute. On the other hand, if the *Cahan* rule is, by statute or otherwise, eliminated, there would appear to be no constitutional objection to a statute repealing the *Priestly* rule.

“The court in *Priestly* made it quite clear that if an officer, having received information from a confidential informant, conducts an independent investigation to verify that information or to uncover other facts which constitute probable cause to make an arrest or search, the rule of that case does not require him to disclose the identity of the informant (50 Cal. 2d, at p. 818).”

Amended in the Senate May 15, 1959.

Amended in the Senate May 26, 1959.

No action by Assembly Committee on Judiciary—Criminal Procedure.

SENATE BILL 1055 (O’Sullivan and Shaw)

An act to add Section 1885 to the Code of Civil Procedure, relating to interpreters for deaf parties in civil and criminal actions and proceedings, declaring the urgency thereof, to take effect immediately.

Amended in Senate May 25, 1959.

Committee counsel offered the following comments on the measure as amended:

Provides that in criminal proceeding in which the accused is deaf, and in proceedings in which a person may be committed to a mental institution and such person is deaf, the court shall appoint a qualified

interpreter to interpret proceedings to him in a language he can understand. Prescribes oath to be taken by interpreter and for the payment of a reasonable interpreter's fee by the county. This was an urgency measure, to take effect immediately.

CHAPTER 1262

SENATE BILL 60 (Richards)

An act to add Section 1952.1 to the Code of Civil Procedure, relating to destruction of exhibits and depositions.

Amended February 25, 1959.

Committee counsel offered the following comments to the committee on the bill at the first hearing on March 5 at which this measure was discussed:

Under present law (C.C.P. 1952) the court may, in a civil action, order the destruction of exhibits which remain in the custody of the court three years after the time for appeal has expired, or if appeal has been taken, or they may remain in the custody of the court three years after the determination of the appeal.

SB 60 seeks to cover additional situations by adding a new section numbered 1952.1. Thus, the bill, as introduced, would permit the destruction of exhibits by court order three years after a motion for a new trial has been granted and the action has not been brought to trial within that period. Also, the exhibits could be destroyed three years after the filing of the remittitur, so also if the action is dismissed.

This bill was heard by Subcommittee No. 1 on February 19, 1959, and several amendments were suggested by that subcommittee.

The bill, as amended in the Senate February 25, reflects those amendments which, in general, are as follows:

1. Language referring to an action having been brought to trial was deleted for the reason that it is possible the case would not have been brought to trial through no fault of the parties but merely as the result of a congested court calendar. Accordingly, the bill was amended to start the run of the three-year period from the date of the filing of a memorandum to set or the making of a motion to set.

2. Parties to the action or procedure may file a written notice requesting the preservation of the exhibit for a stated time.

3. Notice of the proposed destruction of the exhibits is required to be given to the attorneys for the parties introducing the exhibits.

QUERY: Should present Section 1952 also be amended to conform to the policy of permitting a notice by the parties to preserve the exhibit for a stated period of time and also to conform to the policy that no exhibit is to be destroyed without notice to the attorneys introducing the same?

Committee counsel offered the following comments at the second hearing at which the measure was discussed:

At the previous hearing questions were raised by members of the committee as to whether the periods of time provided in the bill for the destruction of exhibits were in conformity with other provisions of the code relating to the time within which a case may be brought

to trial. In other words, committee counsel was requested to check the law to make certain that the destruction of the exhibits, as provided in the present bill, could not occur during the period of time within which, under existing law, the case could be tried or retried.

The question raised involved C.C.P. 583, providing for dismissal of cases for delay in trial. This section provides as follows:

1. Cases *may* be dismissed if not brought to trial within five years *after filing*.

2. Cases *must* be dismissed if not brought to trial within five years *after filing*.

3. After judgment and new trial granted (if no appeal from the order granting the new trial) the case must be dismissed unless brought to trial within three years after entry of the order granting the new trial.

4. After judgment when an appeal is taken and the case reversed and remanded for new trial (or where order for a new trial is appealed from and affirmed on appeal) the case must be dismissed if not brought to trial within three years of the date the remittitur is filed with the clerk.

CHAPTER 344

SENATE BILL 59 (Richards)

An act to add Section 1952.2 to the Code of Civil Procedure, relating to disposition of exhibits.

Committee counsel offered the following comments on the bill as introduced:

This bill provides that upon a judgment becoming final, the court may order the clerk to return exhibits in a civil action to the appropriate attorney introducing the same.

The bill covers the ordinary situations regarding the return of exhibits upon which the law is now silent. It should therefore be distinguished from SB 60, which provides for the destruction of exhibits in civil cases when the parties or their attorneys fail to request their return.

Amended in Senate March 24, 1959.

CHAPTER 343

ASSEMBLY BILL 1155 (Hanna)

An act to add Section 1953f.5 to the Code of Civil Procedure, relating to competency of business records as evidence.

This bill was enacted into law without amendment. It provides that, subject to general rules of competency of evidence in the Uniform Business Records as Evidence Act, Section 1953f, open-book accounts in ledgers, whether bound or unbound, shall be competent evidence.

This bill was supported by the Building Material Dealers Credit Association.

Committee counsel offered the following comments on the bill as introduced:

Generally, Section 1953f, part of the Uniform Business Records as Evidence Act, makes competent records made in the regular course of

business, at or near the time of the event in issue, if the court is satisfied that the sources of information, method and time of preparation were such as to justify its admission.

One court refused to accept as an open-book account under this provision containing notations on 12 separate sheets that were stapled together later on grounds they were neither a book nor an account. *Tabata v. Murane*, 76 CA 2d 887 (1946).

CHAPTER 1009

SENATE BILL 273 (Grunsky et al.)

An act to add Sections 1998, 1998.1, 1998.2, 1998.3, and 1998.4 to the Code of Civil Procedure, relating to subpoena of hospital records

Committee counsel offered the following comments on the bill as introduced:

This bill authorizes hospitals to mail or otherwise deliver records of patients without requiring custodian of records to appear personally unless specifically requested in subpoena. Does not apply where hospital is a party or is the place where the cause of action arose.

Introduced at 1957 Session, passed by the Assembly and referred to Senate Judiciary Committee. Thereafter referred to interim committee. A sponsor (California Hospital Association) advises that subpoenas have increased to extent that cost to hospitals has become substantial burden without any corresponding advantage to litigants.

The State Bar advised by letter of December 3, 1958 that the bill was similar to AB 2208 (1957) a State Bar bill, which they had withdrawn. Board determined not to oppose this new bill if it was amended to provide adequate safeguards in protecting privileged information contained in the records.

California Medical Association through its legal counsel objected to terminology in original bill, which was later withdrawn when bill revised.

Committee action, 10-7-58: Bill be revised and rescheduled for further hearing, Revisions in Section 1998.3 and 1998.4 so that there will be no question of the hospital charging for photostatic copies, etc. Also to provide clear language in subpoena where attorney desires presence of witnesses.

It is understood that representatives of the State Bar have discussed the bill with the principal sponsor and that certain amendments designed to meet objections will be presented by a representative of the California Hospital Association.

Amended in Senate March 20, 1959.

An act to add Sections 1998, 1998.1, 1998.2, ~~1998.3~~, and ~~1998.4~~ 1998.3, 1998.4 AND 1998.5 to the Code of Civil Procedure, relating to subpoena of hospital records.

Amended in Senate April 3, 1959.

Amended in Assembly May 1, 1959.

Amended in Assembly May 15, 1959.

CHAPTER 1059

SENATE BILL 712 (Regan)

An act to amend Sections 2016, 2019, 2020, 2021, 2024, 2025, 2026, 2030, 2032, 2033 and 2034 of, and to add Sections 1991.1, 1991.2 and 2023 to, the Code of Civil Procedure, relating to depositions and discovery.

Amended in the Senate April 29, 1959.

Comment of committee counsel on the bill as amended on April 29, follows:

This is a bill dealing with amendments to various sections of the code affecting "discovery" in civil matters. It is sponsored by the State Bar and was referred to a special subcommittee with amendments.

At the subcommittee hearing it appeared that although the bill had been widely distributed no objection or controversy had been noted except as to the effect of a subpoena duces tecum.

Representatives of the Barrister's Club of San Francisco appeared in opposition to sections of the bill relating to this matter and stated in substance that under the present law it is not clear whether at a deposition taken pursuant to a subpoena duces tecum the adverse attorney could actually examine the records produced. They stated that under the Federal Rule this could not be done so that the only effect of a subpoena duces tecum was to allow the witness to look at the records while answering questions. The State Bar, on the other hand, believed that the present rule under a subpoena duces tecum in California allowed the adverse attorney to examine the records although conceding that the Federal Rule was different.

The present state of the California law becomes important in considering the language on lines 10, 11 and 12 of Page 2 of the original bill which by requiring the production of the books by the witness clearly implies that they may be examined. Present law on the subject in other sections of the code simply require the witness to bring the documents with him.

The Barrister's Club opposed the theory of allowing the adverse attorney to examine the documents under a subpoena duces tecum for the reason that these subpoenas are issued by the clerk upon a mere affidavit and thus allowing a fishing expedition of the records of the adverse party. They contend that the proper rule for a person who wants to examine documents is to make a motion for the examination of documents which is noticed before the court and gives the adverse party an opportunity to object or to at least limit the books or documents to be examined. They concede, however, that such a motion only applies to parties and not other witnesses.

The subcommittee was reluctant to accept the theories of the Barrister's Club until such time as some comprehensive system could be worked out to allow examination of the records of nonparty witnesses, at the same time agreeing that there was considerable merit to the contention that there should be some judicial examination upon notice as to just what records are to be examined.

The final conclusion of the subcommittee was to amend the bill to delete the controversial sections regarding the subpoena duces tecum upon the understanding that the State Bar and the Barrister's Club would re-examine this whole problem during the next interim and fur-

ther that a bill creating the issue would be introduced and referred to the Senate Interim Judiciary Committee for like study during that period.

The bill in its amended form now before the Committee has deleted from its terms the controversial proposals relating to the subpoena duces tecum and in this form there is no known objection.

Amended in the Assembly June 5, 1959.

CHAPTER 1590

F. CORPORATIONS CODE

ASSEMBLY BILL 57 (Busterud et al.)

An act to amend Section 8 of the Corporations Code, to add Section 11 to the Code of Civil Procedure, to amend Section ~~13~~ 31 of the Education Code AS ENACTED BY THE LEGISLATURE AT THE 1959 REGULAR SESSION, to amend Section 8 of the Financial Code, to amend Section 8 of the Labor Code, to add Section 5 to the Probate Code, to amend Section 8 of the Public Utilities Code and, to amend Section 10 of the Vehicle Code, AND TO ADD SECTION 29 TO THE VEHICLE CODE AS PROPOSED BY ASSEMBLY BILL NO. 5, relating to the use of certified mail.

Committee counsel offered the following comments on the bill as introduced:

Extends to various types of civil actions permission to use certified mail in cases where registered mail is now required.

Amended in Assembly February 27, 1959.

CHAPTER 400

SENATE BILL 1422 (Dolwig)

An act to amend Section 830 of the Corporations Code, relating to indemnity for litigation expenses.

Amended in Senate May 29, 1959.

Amended in Senate June 1, 1959.

No action by Assembly.

ASSEMBLY BILL 2803 (Z'berg)

An act to amend Section 834 of the Corporations Code, relating to derivative actions by corporate shareholders.

As introduced, this bill amended Subsection b and Paragraph (1) of Section 834 by specifying that the motion for security must be made within 30 days after service on the corporation or any defendant *who is an officer or director of the corporation, or held such office at the time of the acts complained of*,—and the grounds for such motion shall be based on

(1) That there is no *possibility* that the suit will benefit the corporation or shareholders; (2) that the moving party did not participate in the transaction complained of.

Amended in Senate June 16, 1959.

CHAPTER 2008

SENATE BILL 1008 (Regan)

An act to amend Section 834 of the Corporations Code, relating to derivative actions.

Amended in Senate June 3, 1959.

This bill was pocket vetoed by the Governor for the following stated reason:

“Provisions included in an approved bill.” (See AB 2803—Chapter 2008).

ASSEMBLY BILL 566 (MacBride)

An act to amend Sections 3632 and 3672 of the Corporations Code, relating to amendments to articles of incorporation (Non-stock corporations)

CHAPTER 206**ASSEMBLY BILL 565 (MacBride)**

An act to amend Sections 4119, 4124, 6403, 6700, and 6801 of, to add Sections 6403.1, 6403.2, and 6403.3 to, and to repeal Sections 6202, 6303, 6400, 6401, 6402, 6408, 6409, and 6802 of, the Corporations Code, relating to foreign corporations.

Amended in Assembly March 20, 1959.

CHAPTER 1256**ASSEMBLY BILL 1517 (George E. Brown)**

An act to amend Section 12900 of the Corporations Code, relating to co-operative corporations.

Amended in Senate June 3, 1959.

Amended in Senate June 9, 1959.

CHAPTER 1540**SENATE BILL 596 (Beard)**

An act to amend Section 15502 of the Corporations Code, relating to the formation of limited partnerships. (Proposed by California Land Title Association.)

CHAPTER 998**SENATE BILL 595 (Beard)**

An act to amend Section 15525 of the Corporations Code, relating to limited partnerships. (Certificates)

CHAPTER 489**SENATE BILL 349 (Farr)**

An act to add Division 5, comprising Sections 30000 through 30010, to Title 4 of the Corporations Code, relating to fiduciary security transfers.

Designed to simplify transfer of securities by limiting the liability of the corporation or transfer agent. Would permit transfers without inquiry, other than as to validity of fiduciary's signature.

Provides for handling of adverse claims and liability where there is *actual knowledge* of breach of fiduciary duty. Does not change obligations of corporation or transfer agent with regard to tax laws of the State.

Drafted by National Conference of Commissioners on Uniform State Laws at request of American Bar Association with co-operation of advisory committee composed of representatives of New York Stock Exchange, Corporate Transfer Agents Association, etc. Sponsored by California Commission on Uniform State Laws.

Subcommittee of Senate Interim Judiciary Committee action: October 7, 1958. Presented briefly by Mr. George Richter.

Interim Committee action: December 4, 1958. Full hearing with recommendation that conditional approval be given and if no opposition was presented the Committee would not require a detailed presentation at meeting of Standing Committee. California Bankers Association expressed its approval of the act.

February 17, 1959. It was determined that no express opposition had been received up to this date. Recommendation of "do pass" as introduced was made by the Interim Committee.

CHAPTER 708

G. EDUCATION CODE

ASSEMBLY BILL 409 (Bradley)

An act to amend Section 1007 of the Education Code, Sections 6370 and 6960 of the Harbors and Navigation Code, Section 14164 of the Health and Safety Code, Sections 5553 and 5784.19 of the Public Resources Code, Section 21782 of the Streets and Highways Code and Section 56117 of the Water Code; to repeal Sections 61628, 61630, and 61631 of the Government Code, Sections 4817, 5617, and 6096 of the Health and Safety Code, Sections 16682, 16683, 16684, 16685, 16686, Article 5a (commencing with Section 12830) of Chapter 6 of Division 6 and Article 6 (commencing with Section 29060) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code, Sections 22727, 22728, 22729, 31084, 31085, 31086, 31087, 35753 and 35754 of the Water Code; and to add Article 1.5 (commencing with Section 1018) to Chapter 1 of Division 2, Article 5 (commencing with Section 21658) to Chapter 10 of Division 10, Article 2.5 (commencing with Section 22360) to Chapter 4 of Division 11, Article 3.5 (commencing with Section 22680) to Chapter 5 of Division 11 and Article 8.5 (commencing with Section 22980) to Chapter 6 of Division 11 of the Education Code, Section 61628 to the Government Code, Chapter 4 (commencing with Section 5790) to Part 1.5 of Division 8, Chapter 3.5 (commencing with Section 5905) to Part 2 of Division 8, Chapter 3.5 (commencing with Section 6095) to Part 3 of Division 8 and Article 3 (commencing with Section 6680) to Chapter 5 of Part 5 of Division 8 of the Harbors and Navigation Code, Sections 954, 4817, 5617, 4665.6, 6096, 14163.5, Article 5.5 (commencing with Section 2320) to Chapter 5 of Division 3, Article 4.5 (commencing with Section 2880) to Chapter 8 of Division 3, Article 4.5 (commencing with Section 4130) to Chapter 1 of Part 2 of Division 5, Article 5.5 (commencing with Section 4185.1) to Chapter 1.5 of Part 2 of Division 5, Article 5.5 (commencing with Section 5745) to Chapter 9 of Part 3 of Division 5, Article 8 (commencing with Section 6805) to Chapter 7 of Part 1 of Division 6, Article 5 (commencing with Section 9010) to Chapter 8 of Part 4 of Division 8, Article 6.5 (commencing with Section 14363) to Chapter 1a of Part 3 of Division 12, Article 7.1 (commencing with Section 14488) to Chapter 2 of Part 3 of Division 12, Article 4.1 (commencing with Section 20115) to Chapter 1 of Part 1 of Division 14, Article 2.5 (commencing with Section 24232) to Chapter 2 of Division 20, Article 16 (commencing with Section 24374) to Chapter 2.5 of Division 20, Chapter 7 (commencing with Section 32492) to Division 23, Article 6 (commencing with Section 33340) to Chapter 2 of Part 1 of Division 24 and Article 6 (commencing with Section 34380) to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code, Article 2.5 (commencing with Section 1209) to Chapter 1 of Division 6 of the Military and Veterans Code, Section 5553.5, Article 3 (commencing with Section 9420) to Chapter 4 of Division 9 and

Article 1.5 (commencing with Section 11520) to Chapter 7 of Division 10 of the Public Resources Code, Section 16682, Article 5a (commencing with Section 12830) to Chapter 6 of Division 6, Article 6 (commencing with Section 29060) to Chapter 6 of Part 2 of Division 10, Chapter 4.5 (commencing with Section 22601) to Part 2 of Division 9 and Article 9 (commencing with Section 25951) to Chapter 6 of Part 1 of Division 10 of the Public Utilities Code, Sections 31867, 33550, 35707, Chapter 10.5 (commencing with Section 27190) to Part 3 of Division 16, Chapter 9.5 (commencing with Section 8230) to Part 2 of Division 9, Chapter 11.5 (commencing with Section 19190) to Part 4 of Division 14, Chapter 15.5 (commencing with Section 25360) to Part 1 of Division 16 and Chapter 13.5 (commencing with Section 26225) to Part 2 of Division 16 of the Streets and Highways Code, Sections 8991, 22727, 31084, 35752, 44457, Article 4.5 (commencing with Section 50145) to Chapter 2 of Part 1 of Division 15 and Chapter 4 (commencing with Section 55720) to Part 4 of Division 16 of the Water Code, relating to claims against the State, local public entities and public officers and employees.

Amended in the Assembly April 24, 1959.

An act to amend Section 1007 of the Education Code, Sections 6370 and 6960 of the Harbors and Navigation Code, Section 14164 of the Health and Safety Code, Sections 5553 and 5784.19 of the Public Resources Code, Section ~~24782~~ 27182 of the Streets and Highways Code and Section 56117 of the Water Code; to repeal Sections 61628, 61630, and 61631 of the Government Code, Sections 4817, 5617, and 6096 of the Health and Safety Code, Sections 16682, 16683, 16684, 16685, 16686, Article 5a (commencing with Section 12830) of Chapter 6 of Division 6 and Article 6 (commencing with Section 29060) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code, Sections 22727, 22728, 22729, 31084, 31085, 31086, 31087, 35752, 35753 and 35754 of the Water Code; and to add Article 1.5 (commencing with Section 1018) to Chapter 1 of Division 2, Article 5 (commencing with Section 21658) to Chapter 10 of Division 10, Article 2.5 (commencing with Section 22360) to Chapter 4 of Division 11, Article 3.5 (commencing with Section 22680) to Chapter 5 of Division 11 and Article 8.5 (commencing with Section 22980) to Chapter 6 of Division 11 of the Education Code, Section 61628 to the Government Code, Chapter 4 (commencing with Section 5790) to Part 1.5 of Division 8, Chapter 3.5 (commencing with Section 5905) to Part 2 of Division 8, Chapter 3.5 (commencing with Section 6095) to Part 3 of Division 8 and Article 3 (commencing with Section 6680) to Chapter 5 of Part 5 of Division 8 of the Harbors and Navigation Code, Sections 954, 4817, 5617, 4665.6, 6096, 14163.5, Article 5.5 (commencing with Section 2320) to Chapter 5 of Division 3, Article 4.5 (commencing with Section 2880) to Chapter 8 of Division 3, Article 4.5 (commencing with Section 4130) to Chapter 1 of Part 2 of Division 5, Article 5.5 (commencing with Section 4185.1) to Chapter 1.5 of Part 2 of Division 5, Article 5.5 (commencing with Section 5745) to Chapter 9 of Part 3 of Division 5, Article 8 (commencing with Section 6805) to Chapter 7 of Part 1 of Division 6, Article 5 (commencing with Section 9010) to Chapter

8 of Part 4 of Division 8, Article 6.5 (commencing with Section 14363) to Chapter 1a of Part 3 of Division 12, Article 7.1 (commencing with Section 14488) to Chapter 2 of Part 3 of Division 12, Article 4.1 (commencing with Section 20115) to Chapter 1 of Part 1 of Division 14, Article 2.5 (commencing with Section 24232) to Chapter 2 of Division 20, Article 16 (commencing with Section 24374) to Chapter 2.5 of Division 20, Chapter 7 (commencing with Section 32492) to Division 23, Article 6 (commencing with Section 33340) to Chapter 2 of Part 1 of Division 24 and Article 6 (commencing with Section 34380) to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code, Article 2.5 (commencing with Section 1209) to Chapter 1 of Division 6 of the Military and Veterans Code, Section 5553.5, Article 3 (commencing with Section 9420) to Chapter 4 of Division 9 and Article 1.5 (commencing with Section 11520) to Chapter 7 of Division 10 of the Public Resources Code, Section 16682, Article 5a (commencing with Section 12830) to Chapter 6 of Division 6, Article 6 (commencing with Section 29060) to Chapter 6 of Part 2 of Division 10, Chapter 4.5 (commencing with Section 22601) to Part 2 of Division 9 and Article 9 (commencing with Section 25951) to Chapter 6 of Part 1 of Division 10 of the Public Utilities Code, Sections 31867, 33550, 35707, Chapter 10.5 (commencing with Section 27190) to Part 3 of Division 16, Chapter 9.5 (commencing with Section 8230) to Part 2 of Division 9, Chapter 10.5 (commencing with Section 19190) to Part 4 of Division 14, Chapter 15.5 (commencing with Section 25360) to Part 1 of Division 16 and Chapter 13.5 (commencing with Section 26225) to Part 2 of Division 16 of the Streets and Highways Code, Sections 8991, 22727, 31084, 35752, 44457, Article 4.5 (commencing with Section 50145) to Chapter 2 of Part 1 of Division 15 and Chapter 4 (commencing with Section 55720) to Part 4 of Division 16 of the Water Code, relating to claims against the State, local public entities and public officers and employees.

Amended in Senate June 3, 1959.

An act to amend Section ~~4007~~ 903 of the Education Code, Sections 6370 and 6960 of the Harbors and Navigation Code, Section 14164 of the Health and Safety Code, Sections 5553 and 5784.19 of the Public Resources Code, Section 27182 of the Streets and Highways Code and Section 56117 of the Water Code; to repeal Sections 61628, 61630, and 61631 of the Government Code, Sections 4817, 5617, and 6096 of the Health and Safety Code, Sections 16682, 16683, 16684, 16685, 16686, Article 5a (commencing with Section 12830) of Chapter 6 of Division 6 and Article 6 (commencing with Section 29060) of Chapter 6 of Part 2 of Division 10 of the Public Utilities Code, Sections 22727, 22728, 22729, 31084, 31085, 31086, 31087, 35752, 35753 and 35754 of the Water Code; and to add Article 1.5 (commencing with Section ~~4018~~) to Chapter 1 of Division 2, Article 5 (commencing with Section ~~21658~~) to Chapter 10 of Division 10, Article 2.5 (commencing with Section 22360) to Chapter 4 of Division 11, Article 3.5 (commencing with Section 22680) to Chapter 5 of Division 11 and Article 8.5 (commencing with Section 22980) to Chapter 6 of Division 11 of the TION 926) TO CHAPTER 1 OF

DIVISION 4 OF, ARTICLE 2.5 (COMMENCING WITH SECTION 27591) TO CHAPTER 4 OF DIVISION 20 OF, ARTICLE 3.5 (COMMENCING WITH SECTION 27891) TO CHAPTER 5, DIVISION 20, OF, ARTICLE 8.5 (COMMENCING AT SECTION 28381) TO CHAPTER 6, DIVISION 20 OF, AND SECTION 16978 TO, THE *Education Code*, Section 61628 to the *Government Code*, Chapter 4 (commencing with Section 5790) to Part 1.5 of Division 8, Chapter 3.5 (commencing with Section 5905) to Part 2 of Division 8, Chapter 3.5 (commencing with Section 6095) to Part 3 of Division 8 and Article 3 (commencing with Section 6680) to Chapter 5 of Part 5 of Division 8 of the *Harbors and Navigation Code*, Sections 954, 4817, 5617, 4665.6, 6096, 14163.5, Article 5.5 (commencing with Section 2320) to Chapter 5 of Division 3, Article 4.5 (commencing with Section 2880) to Chapter 8 of Division 3, Article 4.5 (commencing with Section 4130) to Chapter 1 of Part 2 of Division 5, Article 5.5 (commencing with Section 4185.1) to Chapter 1.5 of Part 2 of Division 5, Article 5.5 (commencing with Section 5745) to Chapter 9 of Part 3 of Division 5, Article 8 (commencing with Section 6805) to Chapter 7 of Part 1 of Division 6, Article 5 (commencing with Section 9010) to Chapter 8 of Part 4 of Division 8, Article 6.5 (commencing with Section 14363) to Chapter 1a of Part 3 of Division 12, Article 7.1 (commencing with Section 14488) to Chapter 2 of Part 3 of Division 12, Article 4.1 (commencing with Section 20115) to Chapter 1 of Part 1 of Division 14, Article 2.5 (commencing with Section 24232) to Chapter 2 of Division 20, Article 16 (commencing with Section 24374) to Chapter 2.5 of Division 20, Chapter 7 (commencing with Section 32492) to Division 23, Article 6 (commencing with Section 33340) to Chapter 2 of Part 1 of Division 24 and Article 6 (commencing with Section 34380) to Chapter 1 of Part 2 of Division 24 of the *Health and Safety Code*, Article 2.5 (commencing with Section 1209) to Chapter 1 of Division 6 of the *Military and Veterans Code*, Section 5553.5, Article 3 (commencing with Section 9420) to Chapter 4 of Division 9 and Article 1.5 (commencing with Section 11520) to Chapter 7 of Division 10 of the *Public Resources Code*, Section 16682, Article 5a (commencing with Section 12830) to Chapter 6 of Division 6, Article 6 (commencing with Section 29060) to Chapter 6 of Part 2 of Division 10, Chapter 4.5 (commencing with Section 22601) to Part 2 of Division 9 and Article 9 (commencing with Section 25951) to Chapter 6 of Part 1 of Division 10 of the *Public Utilities Code*, Sections 31867, 33550, 35707, Chapter 10.5 (commencing with Section 27190) to Part 3 of Division 16, Chapter 9.5 (commencing with Section 8230) to Part 2 of Division 9, Chapter 10.5 (commencing with Section 19190) to Part 4 of Division 14, Chapter 15.5 (commencing with Section 25360) to Part 1 of Division 16 and Chapter 13.5 (commencing with Section 26225) to Part 2 of Division 16 of the *Streets and Highways Code*, Sections 8991, 22727, 31084, 35752, 44457, Article 4.5 (commencing with Section 50145) to Chapter 2 of Part 1 of Division 15 and Chapter 4 (commencing with Section 55720) to Part 4 of Division 16 of the *Water Code*, relating to claims against the State, local public entities and public officers and employees.

Committee counsel offered the following comments on the bill:

This is one of the series of claim bills sponsored by the California Law Revision Commission. The bill was amended in the Assembly on April 24. As amended in the Senate on June 3, and as enacted into law, the bill provides that claims against each district are subject to general claims procedure enacted as Chapter 2, commencing with Section 700, Division 3.5, Title 1, of the Government Code. (AB 405, Chapter 1724.)

CHAPTER 1727

ASSEMBLY BILL 1217 (Porter)

An act to amend Section 6334 of the Education Code, and Section 20504 of the Education Code as proposed by Senate Bill No. 2, relating to school district budgets.

Committee counsel offered the following comments on the bill as introduced:

Reduces the required number of public meetings on the school district budget from 2 to 1, in districts in which the average daily attendance is in excess of 200,000. This bill applies only to the Los Angeles City School Department.

CHAPTER 832

SENATE BILL 6 (Farr)

An act to add Section 7408 to the Education Code, relating to school bond validation actions.

Amended in Senate June 1, 1959.

An act to add Section 7408 to the Education Code 21759 **TO THE EDUCATION CODE, AS ENACTED BY THE LEGISLATURE AT ITS 1959 REGULAR SESSION, relating to school bond validation actions.**

CHAPTER 1910

SENATE BILL 542 (McBride)

An act to amend Sections 16838, 16839, 16840, 16841, and 16843 of the Education Code, and Sections 12408, 12409, 12410, 12411, and 12413 of the Education Code as proposed by Senate Bill No. 2, and Section 700 of the Welfare and Institutions Code, relating to insubordinate or disorderly school children.

Committee counsel offered the following comments on the bill as introduced:

The bill provides a procedure whereby school officials may file petitions before the juvenile court in cases where children are habitual truants or disorderly during school attendance. Such petition would result in the child being made a ward of the juvenile court if the court found the facts to be true and it was explained by the school officials interested in the bill that it was necessary to provide some method of supervision over such children, otherwise under present law the school

officials can only suspend or expel which helps the remaining students but does not give any aid to the student who is being disciplined.

Amended in Senate May 11, 1959.

CHAPTER 1202

ASSEMBLY BILL 785 (Biddick)

An act to maintain the Education Code by amending Sections 1825, 4105.5, 5001, 14641, 18366, and 22674 thereof, and by repealing Section 7714.2 thereof, and by amending Sections 939, 1409, 17151, 14372, 15716, and 27874, and repealing Section 19578, of the Education Code as proposed by Senate Bill No. 2, relating to institutions of learning, including the establishment, maintenance, government, and operation of schools and libraries.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. Makes no substantive change.

CHAPTER 595

H. FINANCIAL CODE

ASSEMBLY BILL 775 (Biddick)

An act to codify Section 6 of Chapter 184 of the Statutes of 1957, by repealing said section, and by adding Section 18212 to the Financial Code, relating to capital and surplus of industrial loan companies.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. Makes no substantive change.

CHAPTER 587

I. FISH AND GAME CODE

SENATE BILL 143 (Erhart)

An act to add Section 856 to the Fish and Game Code and to amend Section 817 of the Penal Code, relating to members of the Wildlife Protection Branch of the Department of Fish and Game.

Amended in Senate March 4, 1959.

Amended in Senate March 13, 1959.

Committee counsel offered the following comments on the bill as amended:

Would make enforcement employees of the Fish and Game Department peace officers for the purpose of enforcing the provisions of the Fish and Game Code.

Amended in Senate May 6, 1959.

CHAPTER 871

ASSEMBLY BILL 856 (Biddick)

An act to repeal Section 1354 (as added by Chapter 1037, Statutes of 1957) of the Fish and Game Code, relating to Archibald Lake Public Fishing and Recreation Area.

Committee counsel offered the following comments on the bill:

Repeals provision permitting farm lands to be acquired by eminent domain proceedings for inclusion in the Archibald Lake Public Fishing and Recreation Area, which becomes obsolete on the 91st day after the 1959 Session of the Legislature.

CHAPTER 620

ASSEMBLY BILL 855 (Biddick)

An act to amend and renumber Section 4187 (as added by Chapter 2017, Statutes of 1957) of the Fish and Game Code, relating to special hunting permits.

Committee counsel offered the following comments on the bill:

Makes no substantive change.

CHAPTER 619

ASSEMBLY BILL 786 (Biddick)

An act to maintain the Fish and Game Code by amending Sections 10828 and 10841 thereof, by amending and renumbering Sections 8317 and 19031 thereof, and by repealing Article 9 (commencing with Section 8100) of Chapter 1, Part 3, Division 6, and Sections 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, and 8316, thereof, relating to fish and game.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. Makes no substantive change.

CHAPTER 596

J. GOVERNMENT CODE

ASSEMBLY BILL 405 (Bradley)

An act to add Division 3.5 (commencing with Section 700) to Title 1 of the Government Code, to repeal Section 342 of the Code of Civil Procedure and to add Sections 313 and 342 to said code, relating to claims against the State, local public entities and public officers and employees.

Committee counsel offered the following comments on the bill as introduced:

AB 405 is one of a series of bills sponsored by the California Law Revision Commission which relate to claims against local agencies. AB 405 is the key bill of the series. Others are AB 406—Chapter 1715, AB 407—Chapter 1725, AB 408—Chapter 1726, AB 409—Chapter 1727, and AB 410—Chapter 1728.

The following explanation of this series, as introduced, is an excerpt from the report of the California Law Revision Commission entitled "Recommendation and Study Relating to the Presentation of Claims Against Public Entities," January 1959:

"The law of this State contains many statutes and county and city charters and ordinances which bar suit against a governmental entity for money or damages unless a written statement or 'claim' setting forth the nature of the right asserted against the entity, the circumstances giving rise thereto and the amount involved is communicated to the entity within a relatively short time after the claimant's cause of action has accrued. Such provisions are referred to in this Recommendation and Study as 'claims statutes.'

"Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

"The principle justifying claims statutes has been extensively accepted in California over a long period of time. Claims statutes appeared as early as 1855. Today there are at least 174 separate claims provisions in the law of this State, scattered through statutes, charters, ordinances and regulations. As appears below and more fully in the research consultant's report, these provisions differ widely as to many material matters, including claims covered, time for filing, and information required to be furnished.

"It has become increasingly clear in recent years that the implementation of the claims statute principle in this State by the enactment of numerous and conflicting claims provisions has created grave problems both for governmental entities and those who have just claims against them. The Law Revision Commission was, therefore, authorized and directed to study and analyze the various provisions of law relating

to the filing of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised.¹ The Commission has made an exhaustive study of existing claims statutes and the judicial decisions interpreting and applying them.

"On the basis of this study the Commission has concluded that the law of this State governing the presentation of claims against governmental entities is unduly complex, inconsistent, ambiguous and difficult to find, that it is productive of much litigation and that it often results in the barring of just claims. This conclusion is supported by the following facts among others disclosed by the Commission's study:²

"1. There are at least 174 separate claims provisions in California. Yet a large number of cities, districts and other local entities are not protected by any claims statute.

"2. There is great disparity among existing claims statutes with respect to the type of claims which are subject to presentation requirements, the time limits for presenting claims, the official to whom claims must be presented, the information which the claimant must furnish, the requirements of verification and signature, the time allowed for consideration of the claim by the governmental entity and the time allowed for commencing an action after a claim is rejected. A claim must be presented in conformity with the provisions of the particular claims statute applicable to it to avoid barring suit on the claim. Yet there is much ambiguity and overlapping in claims provisions, with the result that claimants, attorneys and courts are often confused as to which, if any, of several claims provisions applies to a particular case.

"3. The courts have generally given claims provisions a strict construction, although a few courts have been relatively liberal in particular cases. As a result, many actions based upon apparently valid claims have been barred solely by reason of a technical failure to comply with the applicable claims statute, whereas in other factually similar cases technical deficiencies have not barred relief. This results in unfairness to particular claimants and leads to unnecessary litigation.

"4. No consistent pattern appears in the judicial decisions dealing with the extent to which the principles of waiver and estoppel may be invoked to preclude a governmental entity from relying upon technical noncompliance with a claims provision.

"5. Failure to comply with technical requirements of claims provisions, such as the failure to verify a claim, has frequently been the basis for barring relief to a claimant, even though such defect clearly did not impair the effectiveness of the claim in fulfilling the basic notice-giving function and purpose of the claim filing requirement. Although the courts have often applied the doctrine of substantial compliance to excuse certain technical failures to comply with claims filing requirements, there is great uncertainty as to which types of defects may and may not be excused through application of this doctrine.

"The Commission has concluded that these and other substantial defects in existing claims statutes, detailed in its research consultant's study, require remedial legislative action. The Commission does not

¹ Cal. Stat. 1956, res. c. 35, p. 256.

² For a more complete statement of the defects in existing claims statutes see research consultant's study, *infra* at A-17.

believe, however, that these defects warrant an abandonment of the claims statute principle in this State. The legitimate interests of governmental entities and the public whom they represent require that prompt notice of claims against them be given to such entities. The Commission recommends, therefore, not only that the principle be continued in effect as to those governmental entities which are now protected by claims statutes but that similar protection be extended to the considerable number of such entities which do not presently have it.

"On the other hand, the Commission believes that the glaring defects in existing claims statutes can be virtually eliminated by legislative action. To this end the Commission has drafted a new general claims statute which, if enacted, would govern the presentation of most claims for money or damages against governmental entities in this State. The Commission recommends that the Legislature enact this new general claims statute and that existing claims provisions be repealed or revised to conform to the new statute. The Commission believes that if this recommendation is accepted the legitimate interest of governmental entities in prompt notice of claims against them will be adequately protected while, by virtue of the ready accessibility and general coverage of the new statute, just claims can be easily filed and the substantial rights of claimants preserved.

"The principal features of the legislation recommended by the Commission are the following:

"Claims Presentation Procedure. The basic scheme of the proposed general claims statute is simple: no suit may be brought against a governmental entity on a cause of action to which the statute is applicable until a written claim relating thereto has been presented to the entity and time has been allowed for action thereon by its governing body. The claim must be presented not later than 100 days after the cause of action to which it relates has accrued. Thereafter the governing body has 80 days within which to act upon the claim. If it does not act within 80 days, the claim is deemed denied as a matter of law. Suit must be brought within nine months after the date on which the claim was presented.

"Provisions Designed To Avoid Injustice. The statute incorporates three provisions designed to alleviate hardship to claimants which have been recognized, albeit not uniformly, in the decisions or statutes of this and other states:

"(a) Defects in a claim are waived unless the claimant is given written notice thereof by the entity.

"(b) Time for filing is extended for a period not to exceed one year in the case of the claimant's death, minority, or physical or mental disability during the claim-presenting period, if the governmental entity will not be unduly prejudiced thereby.

"(c) The governmental entity is estopped to assert the claimant's failure to comply with the statute if he relied upon a representation made by an officer, employee or agent of the entity that a presentation of claim was not necessary or that a claim as filed conformed to legal requirements.

“Constitutional Amendment. If the goal of general uniformity of claims provisions is to be realized in respect of chartered counties, cities and counties and cities it is desirable to amend the Constitution to confirm the Legislature’s power to prescribe procedures governing the presentation, consideration and enforcement of claims against such entities. The Commission has drafted and recommends the adoption of a constitutional amendment for this purpose. The statutes proposed by the Commission expressly provide that they shall not take effect as to a chartered county or city which has a claims procedure prescribed by charter or pursuant thereto until this constitutional amendment has been adopted.

“Coverage of General Claims Statute. The proposed new statute does not govern the presentation of all claims against all governmental entities in this State. Claims against the State itself have been omitted therefrom because the State is unique in comparison with other entities, its legislative body does not meet regularly throughout the year, and the existing statutory provisions governing the filing of claims against the State appear to provide an adequate and well established procedure. Thus, the new statute applies only to local public entities, defined to include any county, city and county or city (but delayed in effect as to some chartered counties and cities as explained above) and any district, local authority or other political subdivision of the State, claims against which are not paid by warrants drawn by the State Controller.

“Even as to local public entities, however, the coverage of the new general claims statute is not universal. Like nearly all existing claims statutes, it applies only to claims for money or damages. Moreover, certain types of claims for money or damages are expressly excluded from the statute—for example, claims for tax exemptions and refunds, claims by public officers and employees for salaries, expenses and allowances, and claims for principal and interest on bonded indebtedness. In such cases the same need for prompt notice and investigation does not usually exist and the filing of such claims can better be regulated by the statute which creates and governs the rights involved. Another exception to the coverage of the proposed statute is found in the authority given to local public entities to include special provisions in written contracts governing the presentation, consideration and payment of claims arising thereunder, thus permitting a desirable flexibility in contract situations.

“Coordination of the New General Claims Statute With Existing Law. The legislation recommended by the Commission includes the following provisions designed to fit the new general claims statute into the law of this State in such a way as to accomplish the desired simplification of the law without prejudice to either the local public entities or the claimants to whom it will apply:

“(a) All statutes presently governing the presentation of claims against local public entities have been either repealed or amended where this is necessary to eliminate conflicts between them and the new general claims statute. In the interest of improving the structure of the Government Code the provisions thereof relating to claims against

the State (Sections 16000-16054) and those relating to claims against public officers and employees (Sections 1980-82) have been transferred to new Division 3.5 of Title 1 of the Government Code. Thus, Division 3.5 will contain the statutes governing claims against the State, against local public entities (the new general claims statute) and against public officers and employees.³

“(b) All local public entities are authorized to prescribe by charter, ordinance or regulation claims procedures applicable to claims not governed by the general claims statute or by other statutes specifically applicable thereto. This is necessary to close the gap in existing claims statute coverage which will be created by the repeal of claims statutes insofar as they apply to types of claims not covered by the new general claims statute.

“(c) If the objectives of this study are to be achieved it will also be necessary for local public entities to repeal claims provisions which are presently found in their charters, ordinances and regulations lest these become traps for unwary citizens. The Commission hopes that this coordination of local law with the new statute will be expeditiously accomplished soon after the enactment of the new general claims statute. It is anticipated, however, that at best it will take some time to accomplish all repeals and amendments of existing claims provisions which will be necessary to coordinate them with the new statute. The Commission has, therefore, included in the general claims statute a provision that until July 1, 1964 (nearly five years after the effective date of a bill enacted by the 1959 Session of the Legislature) a claim may be presented in conformity *either* with the new statute *or* with any existing claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of the new claims statute and not yet repealed at the time the claim is presented.

“*Claims Against Public Officers and Employees.* There are several provisions in the law of this State which require that a claim be filed before suit can be brought against a public officer or employee on his personal liability to the claimant. These provisions are in many respects ambiguous, uncertain and overlapping, thus sharing most of the defects found in existing claims provisions pertaining to public entities. Substantial questions exist as to whether such provisions are justifiable and, if so, whether they should be made uniformly applicable to officers and employees of all local public entities. If it is determined that such provisions should remain in existence as to some or all entities they should be amended to eliminate existing ambiguities and overlaps.

“The Law Revision Commission has not had an opportunity to give public officer and employee claims statutes sufficient study to be prepared to make a recommendation concerning them at this time. The Commission intends to study these claims statutes further and to pre-

³ The legislative bills necessary to accomplish this coordination of the statutory law relating to claims against governmental entities are not printed in this publication, both because of their length and because so much of the legislation is of a repetitious character.

sent a recommendation concerning them to a later session of the Legislature.”

Amended in Assembly March 24, 1959.

Amended in Assembly April 24, 1959.

Amended in Assembly May 8, 1959.

Amended in Senate June 3, 1959.

Amended in Senate June 12, 1959.

CHAPTER 1724

ASSEMBLY BILL 1794 (Crawford et al.)

An act to add Section 1030 to the Government Code, relating to peace officers. (Fingerprinting.)

CHAPTER 1481

ASSEMBLY BILL 533 (Masterson et al.)

An act to amend Section 1225 of the Government Code, relating to the authority of legislators to administer and certify oaths.

CHAPTER 218

ASSEMBLY BILL 2409 (Brown)

An act to add Section 1230 to, and to amend Section 19331 of, the Government Code, relating to jury duty. (Leaves of absence.)

Amended in Assembly May 18, 1959.

Amended in Assembly May 27, 1959.

An act to add Section 1230 to, and to amend Section 19331 of, the Government Code, relating to ~~jury duty~~ LEAVES OF ABSENCE.

Committee counsel offered the following comments on the bill as amended:

Authorizes the governing body of any political subdivision of the State to grant leaves of absence to employees for appearance in court as witness other than litigant, to serve on a jury, or to respond to official orders of other governmental jurisdictions for reasons not brought about through connivance or the misconduct of the employee. It permits the governing body to pay the employee an amount up to the difference between his regular earnings and any amount received for jury or witness fees.

As introduced, the bill provided for the payment of not to exceed \$20 per day, and that no employee be paid for longer than 30 days for any one period of jury duty. This provision was amended out of the bill on May 18.

CHAPTER 1552

ASSEMBLY BILL 1443 (Cunningham)

An act to add Section 1481.1 to the Government Code, and to amend Section 1203.8 of the Penal Code, relating to bonding of probation officers and their assistants.

Committee counsel offered the following comments on the bill as introduced:

Provides that adult probation officers and their assistants and deputies may be covered by a master bond used in a county in lieu of furnishing individual bonds.

CHAPTER 1288

ASSEMBLY BILL 406 (Bradley)

An act to repeal Article 2 (commencing with Section 1980) of Chapter 6 of Division 4 of Title 1, Part 1 (commencing with Section 16000) of Division 4 of Title 2, and Sections 2003 and 53053 of the Government Code, to add Chapters 1 (commencing with Section 600) and 3 (commencing with Section 800) to Division 3.5 of Title 1 of the Government Code, and to amend Section 53052 of the Government Code, relating to claims against the State, local public entities and public officers and employees.

Amended in Assembly March 20, 1959.

Amended in Assembly April 24, 1959.

Committee counsel offered the following comments on the bill:

This bill was sponsored by the California Law Revision Commission and is one of the series relating to claims. See AB 405—Chapter 1724, page 533.

CHAPTER 1715**SENATE BILL 815 (Regan et al.)**

An act to amend Section 4206 of the Government Code, and to amend Sections 5297 and 7216 of the Streets and Highways Code, and to amend Section 13 of the Drainage District Improvement Act of 1919 (Ch. 354, Stats. 1919), relating to bonds of contractors for public works.

Amended in Senate April 20, 1959.

An act to amend Section 4206 of the Government Code, and to amend Sections 5297 and 7216 of the Streets and Highways Code, and to amend Section 13 of the Drainage District Improvement Act of 1919 (Ch. 354, Stats. 1919), relating to

AN ACT TO ADD SECTIONS 4209 AND 4210 TO THE GOVERNMENT CODE, RELATING TO STOP NOTICES AND bonds of contractors for public works.

Committee counsel offered the following comments on the bill as amended April 20:

This is a companion bill to SB 814 (Mechanics' Lien Notice Bill) heretofore approved by the committee.

SB 814 provides a notice system to the owner and contractor in mechanics' lien cases and this bill seeks to adopt a similar system insofar as public work is concerned.

Amended in Senate May 26, 1959.

CHAPTER 1594**SENATE BILL 353 (Farr)**

An act to add Chapter 6, comprising Sections 5500 through 5506, to Division 6 of Title 1 of the Government Code, relating to facsimile signatures or seals on public obligations.

Committee counsel offered the following comments on the bill as introduced:

Permits public officials to use a facsimile signature on bond issues or other instruments of payment such as checks, warrants, drafts, etc.

after filing his manual signature with Secretary of State. Also provides for use of facsimile seals and penalties for improper use of such signatures or seals.

It was drafted by National Conference of Commissioners on Uniform State Laws in response to requests from Council of State Governments, Investment Bankers Association and the Section on Municipal Law of the American Bar Association, and was presented by California Commission on Uniform State Laws.

Interim Committee action: Hearing December 4, 1958. Suggested amendment that facsimile signature be on file with County Clerks for convenience of local political subdivisions. Otherwise, there being no controversy, that the act be favorably recommended without formal hearing. February 17, 1959: Recommended "do pass" without further hearing.

Amended in Assembly May 15, 1959.

An act to add SECTION 5303 TO, TO ADD Chapter 6, comprising Sections 5500 through 5506, to Division 6 of Title 1 of, AND TO AMEND SECTIONS 5302 AND 29917 OF the Government Code; ; TO AMEND SECTION 21809 OF THE EDUCATION CODE AS ENACTED BY THE LEGISLATURE AT ITS 1959 REGULAR SESSION; TO AMEND SECTION 55525 OF THE WATER CODE; TO AMEND SECTION 4790 OF THE HEALTH AND SAFETY CODE; AND TO AMEND SECTION 7 OF THE LOS ANGELES COUNTY FLOOD CONTROL ACT (CHAPTER 755 OF THE STATUTES OF 1915); relating to SIGNATURES, COUNTERSIGNATURES, AND facsimile signatures or seals on public obligations.

Amended in Assembly May 25, 1959.

CHAPTER 1061

ASSEMBLY BILL 1227 (Ralph M. Brown)

An act to amend Section 6021 of the Government Code, relating to newspapers of general circulation.

Committee counsel offered the following comments on the bill as introduced:

This bill was proposed by the California Land Title Association and makes various technical changes in the Government Code relating to establishment of a newspaper of general circulation.

Amends the section setting forth requirements for establishment as a newspaper of general circulation to relieve a petitioning newspaper from the requirement of publishing in another newspaper in the same county. This was felt necessary since some counties only have one such paper.

Section 2 is a validation clause dealing with publications in newspapers which have not met the old requirement, which was established in effect in 1955.

The legislative representative of the California Land Title Association furnished the committee with the following explanation of the purpose of the bill:

"Prior to 1955, as set forth in Section 6021 of the Government Code, the publication requirements for a newspaper petitioning to have itself

established as a newspaper of general circulation were that publication was required only (a) in the petitioning newspaper, and (b) in some other newspaper if the court so directs.

"Since September 7, 1955, in addition to publishing in the petitioning newspaper, it is necessary to publish in the same city as the petitioning newspaper, if there is another newspaper in the same city, and, if none, then in some other newspaper of general circulation published in the same county. Under the existing law, it is obviously impossible for any newspaper to qualify as a newspaper of general circulation in a county in which there is no other qualified newspaper of general circulation in which it can publish. Modoc County serves as an illustration and there are apparently one or two other counties in the State where there is only one newspaper, at least one which has been established to be a newspaper of general circulation.

"In one or two instances courts have declared a newspaper to be one of general circulation notwithstanding the fact that the publication requirements of Section 6021 have not been complied with because it was impossible for the petitioning newspaper to publish its petition and notice in another newspaper of general circulation published in the same county because there did not exist such a newspaper.

"It is often vitally important that a publication be a valid one and lawyers and others are always concerned about the sufficiency and validity of legal notices that may have been published in such a newspaper.

"The proposed amendment to Section 6021 is designed to prevent occurrences of the type referred to in the preceding paragraph.

"Section 2 of the proposed legislation is intended to validate the sufficiency of publications made in a newspaper which has had its standing established as a newspaper of general circulation by judicial decree but which, however, has not, because there is no other paper of general circulation in the county, been able to comply with the publication requirements of Section 6021."

Amended in Senate May 21, 1959.

CHAPTER 1279

ASSEMBLY BILL 1226 (Ralph M. Brown)

An act to amend Sections 6062, 6062a, 6063, 6063a, 6064, 6065, and 6066 of the Government Code, and Section 782 of the Probate Code, relating to publication of notice.

The following explanation of the purpose of the bill, as introduced, was furnished to the committee by the legislative representative of the California Land Title Association:

"(4) (a) These seven proposals are to amend Government Code Sections 6062, 6062a, 6063, 6063a, 6064, 6065 and 6066, *first*: to eliminate the ambiguity presently existing in the expression 'six days apart' in 6062a and 6063a, which has caused considerable controversy as to whether six days must intervene on none of which a pertinent publication is to be made or, on the other hand, the expression was intended to convey the same meaning as when one says 'Sundays are seven days apart' although there are not seven *intervening* days between them, and, incidentally, to reduce the 'six' to 'five' days intervening between publications to take care of occasional publications

before a holiday on which day, otherwise, a publication would normally be made;

“*Second*: to make clear, definite and certain exactly when the period of notice is complete as between the requirement that the notice be published once a week for a certain number of weeks, and the present statement that the period of notice *terminates* on the day following the last day of publication which normally would be several days short of the stated length of publication (see, especially, 6063, 6064, 6065 and 6066); and

“*Third*: to bring all of these sections (secs. 6061-6066) into harmony by using similar expressions in each to state similar requirements and explanations. No change of substance has been made except to specify that the period of notice is the number, expressed in days, that the specified number of weeks of publication multiplied by seven produces.”

Amended in Senate May 13, 1959.

CHAPTER 954

SENATE BILL 769 (Teale et al.)

An act to amend Section 8205 of the Government Code, relating to notary public.

Committee counsel offered the following comments on the bill:

Proposes to amend the law relating to notaries public by requiring them to typewrite or legibly print their names beneath their signatures when they take acknowledgments, affidavits, etc.

CHAPTER 670

ASSEMBLY BILL 787 (Biddick)

An act to maintain the Government Code by amending Sections 9141, 9320, 9357.2, 9360.3, 11290, 12541, 13373, 16305.6, 16472, 16480.1, 50532, 51300, and the heading of Chapter 6 (commencing with Section 54300), Part 1, Division 2, Title 5, thereof, and by amending and renumbering Part 10 (commencing with Section 15750) of Division 3, Title 2, Article 4 (commencing with Section 34870) of Chapter 7, Part 1, Division 2, Title 4, Chapter 12 (commencing with Section 55300) of Part 2, Division 2, Title 5, and Chapter 4 (commencing with Section 61930) of Part 7, Division 2, Title 6, thereof, and by repealing Article 2.5 (commencing with Section 21000) of Chapter 8, Part 3, Division 5, Title 2, and Sections 31671.2 and 75030, relating to the government of public agencies within this State.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. Makes no substantive change.

CHAPTER 597

SENATE BILL 344 (Farr)

An act to amend Section 10407 of the Government Code, relating to the Commission on Uniform State Laws.

Committee counsel offered the following comments on the bill as introduced:

Removes monetary limit heretofore placed on the Commission's contribution to work of National Conference on Uniform State Laws, thereby authorizing a *proportionate* share of the expenses.

Sponsored by Commission on Uniform Laws.

Approved by Interim Committee without amendment February 19, 1959.

Amended in Assembly May 15, 1959.

CHAPTER 1838**ASSEMBLY BILL 567 (MacBride)**

An act to amend Sections 12164, 12203, and 12204 of the Government Code, relating to duties and fees of the Secretary of State. (Recordation of documents.)

CHAPTER 927**ASSEMBLY BILL 2698 (Petriss)**

An act to add Section 12419.4 to the Government Code, relating to liens for amounts owing to the State. (Sponsored by the Attorney General.)

Amended in Assembly June 5, 1959.

Amended in Senate June 16, 1959.

CHAPTER 1994**SENATE BILL 354 (Farr)**

An act to repeal Section 2 of Chapter 1820 of the Statutes of 1955 and to repeal and add Article 7 (commencing with Section 12580) to Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state supervision and enforcement of certain charitable trusts and similar relationships, declaring the urgency thereof, to take effect immediately.

Committee counsel offered the following comments on the measure as introduced:

This is one of the bills recommended for adoption by the California Commission on Uniform State Laws. It deals with the so-called uniform supervision of trustees for charitable purposes act. It re-enacts in permanent form the present statute on the same subject which is now due to expire on July 1, 1959. The bill was presented by the Commission on Uniform State Laws at a meeting of the Senate Interim Judiciary Committee on February 17.

Amended in Senate March 23, 1959.

Amended in Senate May 8, 1959.

CHAPTER 1258**SENATE BILL 321 (Gibson)**

An act to amend Section 13106 of the Government Code, relating to quitclaiming of state-owned easements and rights-of-way.

This bill was introduced at the request of the Department of Finance.

Committee counsel offered the following comments on the measure as amended:

Exempts quitclaim conveyances of state-owned easements or rights-of-way to the Federal Government or to logical governmental agencies from provisions requiring publication of notice.

Amended in Senate March 25, 1959.

CHAPTER 537

ASSEMBLY BILL 779 (Biddick)

An act to maintain the Government Code by amending Sections 13210, 13212, and 13213 thereof, relating to state burial grounds.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes regarding State burial grounds in the City of Sacramento and of the Union Cemetery in San Mateo County. Makes no substantive change.

CHAPTER 590**ASSEMBLY BILL 777 (Biddick)**

An act to codify Chapter 992 of the Statutes of 1945 by repealing said act, and by adding Article 3 (commencing with Section 13410) to Chapter 4 of Part 3, Division 3, Title 2 of the Government Code, relating to the purchase and acquisition of surplus property from the Federal Government or its agencies.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. Makes no substantive change.

CHAPTER 589**ASSEMBLY BILL 780 (Biddick)**

An act to codify Sections 7, 7.1, and 7.2 of Chapter 20 of the Statutes of 1946, First Extraordinary Session, by amending Sections 6 and 7 and repealing Sections 7.1 and 7.2, and by adding Part 7.5 (commencing with Section 15490) to Division 3 of Title 2 of the Government Code, relating to the State Allocation Board.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. No substantive change.

CHAPTER 591**ASSEMBLY BILL 773 (Biddick)**

An act to codify Section 12 of Chapter 29, 1956 First Extraordinary Session, by repealing said section, and by adding Article 8 (commencing with Section 16419) to Chapter 2, Part 2, Division 4, Title 2 of the Government Code, relating to the investment fund.

Committee counsel offered the following comments on the bill:

No substantive change.

Remained on Senate Inactive File.

ASSEMBLY BILL 853 (Biddick)

An act to amend and renumber Sections 20495 (as added by Chapter 1155, Statutes of 1957), 37395 (as added by Chapter 1475, Statutes of 1957), and 70045.9 (as added by Chapter 1786, Statutes of 1957) of the Government Code, relating to local governmental operations.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. No substantive change.

CHAPTER 617

ASSEMBLY BILL 854 (Biddick)

An act to repeal Sections 21152 (as added by Chapter 65, Statutes of 1957), 21152 (as added by Chapter 936, Statutes of 1957), 21153 (as added by Chapter 936, Statutes of 1957), 69505 (as added by Chapter 1045, Statutes of 1957), and 73650 (as added by Chapter 65, Statutes of 1957) of the Government Code, relating to public employment.

Committee counsel offered the following comments on the bill as introduced:

Codification to maintain codes. No substantive change.

CHAPTER 618**ASSEMBLY BILL 1606 (Cunningham)**

An act to amend Section 24103 of the Government Code, relating to peace officers' deputies.

Committee counsel offered the following comments on the bill as introduced:

Removes the present prohibition against appointing any person to the position of deputy sheriff, deputy constable or deputy marshal who has not been a resident of the State for at least one year preceding his appointment.

CHAPTER 1298**ASSEMBLY BILL 2547 (Geddes)**

An act to add Section 25209 to the Government Code, relating to the correction of deeds of real property.

Committee counsel offered the following comments on the bill:

Deed correction by counties.

CHAPTER 1965**ASSEMBLY BILL 1409 (Winton)**

An act to add Section 26206 to the Government Code, relating to rewards for apprehension and conviction of vandals.

Amended in Senate May 22, 1959.

An act to add Section ~~26206~~ 26207 to the Government Code, relating to rewards for apprehension and conviction of vandals.

Provides the board of supervisors may offer and pay rewards payable from county funds, for the furnishing of information leading to the apprehension and conviction of persons who willfully destroy or damage property of the county.

CHAPTER 1287**ASSEMBLY BILL 1346 (Bradley)**

An act to repeal Chapter 13.5 (commencing at Section 26250) of Part 2 of Division 2 of Title 3 of the Government Code, relating to preservation of newspapers.

CHAPTER 834

ASSEMBLY BILL 491 (Kilpatrick et al.)

An act to amend Section 26726 of the Government Code, relating to keepers' fees.

Amended in Assembly March 20, 1959.

The bill provides that keepers' fees for property under execution or attachment shall be raised from \$8 to \$12, and increases the maximum fee such custodian may receive in a single 24-hour period from \$16 to \$24.

This bill was sponsored by the Los Angeles County Counsel and originally provided for increases of \$8 to \$16 and \$16 to \$32.

CHAPTER 1620**ASSEMBLY BILL 135 (Grant and Kennick)**

An act to add Section 26736 to the Government Code, relating to the fees of sheriffs, marshals and constables.

Amended in Senate May 15, 1959.

CHAPTER 926**ASSEMBLY BILL 2093 (Willson)**

An act to amend Section 26827 of the Government Code, relating to fees of county clerk.

Amended in Assembly May 11, 1959.

Amended in Senate June 4, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides the county clerk may charge a \$10 fee for filing a petition for letters of conservatorship, and \$6 for any subsequent filing in the same action, to establish fact of death in an action for administration of an estate.

CHAPTER 1234**ASSEMBLY BILL 379 (Holmes and Bradley)**

An act to amend Section 27361.6 of the Government Code, relating to recordation of instruments.

Amended in Assembly March 6, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides additional details as to printed forms intended to be used for recordation purposes.

CHAPTER 719**ASSEMBLY BILL 2133 (O'Connell et al.)**

An act to amend Section 28102 of the Government Code, relating to jurors' fees in superior and municipal courts.

Committee counsel offered the following comments on the bill as amended:

Increases jurors' fees in San Francisco superior and municipal courts from \$5 to \$6, and provides that trial and grand jury members shall not be paid any traveling mileage fees.

CHAPTER 1793

ASSEMBLY BILL 407 (Bradley)

An act to repeal Sections 29700, 29700.1, 29701, 29702, 29703, 29704, 29705, 29707, 29711, 29713, 29714, 29714.1, 29715, 29716, 29720, to add Sections 29700 and 29706, to renumber Section 29719, to renumber and amend Sections 29706, 29708, 29709, 29710, 29712, 29717, 29718, 29721 and to amend Sections 29741, 29744 and 29748 of the Government Code, and to amend Section 439.56 of the Agricultural Code and Section 945 of the Military and Veterans Code, all relating to claims against counties.

Amended in Senate June 3, 1959.

Committee counsel offered the following comments on the bill as amended:

AB 407 is one of the series of claims bills sponsored by the California Law Revisions Commission. (See AB 405—Chapter 1724, page 533.) As amended in the Senate on June 3 it provides an increase for burial expenses from \$150 to \$250. (Sec. 945.) Briefly, the bill prescribes the procedure for considering claims against counties and permits adoption of forms for such claims if consistent with general claims statute and other applicable laws. Permits the board of supervisors to prescribe additional procedures not inconsistent with general procedure for handling claims.

CHAPTER 1725**SENATE BILL 35 (Richards)**

An act to amend Section 36507 of the Government Code, relating to filing the oath of office by city officers.

Amended in Senate March 18, 1959.

Committee counsel offered the following comments on the bill as amended:

The Clerk of Los Angeles County explained to the committee that the reason for the bill was to provide for a situation not now covered by law for the filing of oaths of newly elected city councilmen after a successful incorporation election.

The amendment makes it clear that while there may be a preliminary deposit of the councilmen's oaths with the city clerk, the oaths must be delivered to that person.

Present law provides for the filing of these oaths of office with the city clerk, but in many instances no clerk is elected prior to the swearing in of the city council and there is no place wherein the oaths of office can be filed prior to the qualification of the city clerk.

CHAPTER 340**ASSEMBLY BILL 408 (Bradley)**

An act to amend Sections 37201 and 39586 of the Government Code, relating to claims against cities.

Amended in Assembly April 24, 1959.

Committee counsel offered the following comments on the bill as amended:

This is one of the series of claims bills sponsored by the California Law Revision Commission. (See AB 405—Chapter 1724, page 533.)

AB 408 was amended in the Assembly on April 24, and as enacted into law provides that claims for money or damages against cities are subject to the new general claims statute.

CHAPTER 1726

SENATE BILL 710 (Teale)

An act to add Chapter 19 (commencing at Section 40500) to Part 2, Division 3, Title 4 of the Government Code, relating to abandoned excavations in cities.

Amended in Senate March 30, 1959.

~~An act to add Chapter 19 (commencing at Section 40500) to~~ AN ACT TO ADD ARTICLE 9 (COMMENCING AT SECTION 50230) TO CHAPTER 1, PART 1, DIVISION 1, TITLE 5 ~~Part 2, Division 3, Title 4 of the Government Code, relating to abandoned excavations in cities.~~

Committee counsel offered the following comments on the bill as amended on March 30:

Provides for the abatement of a new type of nuisance consisting of abandoned excavations. The author states that particularly in cases of the mining counties there are many abandoned shafts which are dangerous and should be abated as a nuisance in order to protect the public from possible danger.

The procedure specified in the bill is generally similar to that of abatement of other nuisances by cities and counties and provides for a resolution declaring the nuisance followed by a posted notice to the owner directing him to abate the nuisance. If he does not do so the local agency may itself provide the protection and the cost to the local agency then constitutes a special assessment against the parcel of land and becomes a lien against it.

Amended in Senate May 5, 1959.

Amended in Assembly June 1, 1959.

CHAPTER 1142

ASSEMBLY BILL 682 (Busterud et al.)

An act to amend Sections 58241, 61128, 61230, and 61823 of the Government Code, Sections 3533, 4659, 5418, and 8127 of the Streets and Highways Code, Sections 1808, 2285, 2341, 2832, 14750, 14815, 14825, 14827, 32004.6, 32004.8, and 33573 of the Health and Safety Code, and Sections 9304, 9313, 9316, and 9713 of the Public Resources Code, relating to recordation of instruments.

Amended in Senate April 23, 1959.

CHAPTER 504

SENATE BILL 326 (Beard)

An act to amend Sections 58850 and 58851 of the Government Code, relating to county boundary commissions.

Committee counsel offered the following comments on the bill as introduced:

Makes the county clerk, or the registrar of voters in counties where this office has been established, a member of the county boundary commission.

CHAPTER 428

ASSEMBLY BILL 2724 (Miller)

An act to add Section 68073.5 to the Government Code, relating to courts. (Dining and parking facilities.)

Amended in Assembly June 5, 1959.

CHAPTER 1998**SENATE BILL 1451 (Slattery)**

An act to amend Section 68083 of the Government Code, relating to partners of judges.

Committee counsel offered the following comments on the bill as introduced:

Amends the provision which now prohibits the partner of a justice court judge from practicing in any justice court in the county in which his partner resides, to permit him to practice in any court other than the justice court to which his partner was elected judge, and to act in any matter except one having a material issue to be decided by his partner.

This measure was pocket-vetoed by the Governor for the following stated reason:

"Present section is satisfactory; and the amendments were ambiguous and difficult to interpret."

ASSEMBLY BILL 1558 (Nisbet and Beaver)

An act to amend Section 68540 of the Government Code, relating to assignment of judges. (Reimbursement between counties.)

Amended in Senate June 15, 1959.

CHAPTER 2119**ASSEMBLY BILL 941 (Masterson et al.)**

An act to amend Section 68546 of the Government Code, relating to court attaches.

Committee counsel offered the following comments on the bill as introduced:

This bill was sponsored by the Judicial Council.

Requires the consent of the presiding judge of the superior court when assignment is made of municipal court attaches to the superior court at the time of the assignment of a municipal court judge to sit on the superior court.

CHAPTER 688**ASSEMBLY BILL 1733 (Dahl)**

An act to add Section 69749.1 to the Government Code, relating to sessions of the superior court. (Applies to newly created courts.)

Amended in Assembly April 17, 1959.

Amended in Assembly April 24, 1959.

An act to add Section ~~69749.1~~ 69749.2 to the Government Code, relating to sessions of the superior court, DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY.

Amended in Senate May 29, 1959.

CHAPTER 1264

SENATE BILL 772 (Shaw)

An act to amend Section 69844 of, and add Sections 71614.5, and 72050.5 to, the Government Code, relating to the duty of the clerk of the superior court to keep records of the court.

Amended in Senate April 3, 1959.

An act to amend Section 69844 of, and add Sections 71614.5, and 72050.5 to, the Government Code, relating to the ~~duty of the clerk of the superior court to keep~~ KEEPING OF COURT records of the court.

Amended in Assembly April 24, 1959.

CHAPTER 671**ASSEMBLY BILL 2446 (Crown)**

An act to amend Section 69903 of, and to repeal Section 69895.5 of, the Government Code, relating to superior court employees. (Applies to Alameda County.)

Amended in Assembly May 29, 1959.

CHAPTER 1897**SENATE BILL 1440 (Arnold)**

An act to add Section 69941.1 to, and to amend Section 72195 of, the Government Code, relating to court reporters.

Amended in Assembly June 12, 1959.

Committee counsel offered the following comments on the bill as amended:

Authorized court reporters in criminal cases in which a request for a daily transcript of the evidence taken at the trial has been granted by the court, to be assisted by another official reporter who shall be compensated at the same rate.

ASSEMBLY BILL 2110 (Bruce F. Allen)

An act to amend Section 69955 of the Government Code, relating to the reporting notes taken by court reporters. (Destruction of notes.)

Amended in Assembly May 4, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Additional cost to the county; possible abuse of provisions.”

CHAPTER 1235**ASSEMBLY BILL 1397 (Williamson and Donahoe)**

An act to add Sections 69957, 69958, 69959, 72196, 72197, and 72198 to the Government Code, relating to official reporters of the superior court. (Assignments to Municipal Courts.)

Amended in Assembly April 17, 1959.

CHAPTER 1011

SENATE BILL 811 (Dolwig)

An act to add Section 70044.5 to the Government Code, relating to court reporters of the Superior Court of the County of San Mateo.

Amended in Senate April 21, 1959.

CHAPTER 1407**SENATE BILL 204 (Thompson)**

An act to amend Section 70046.1 of the Government Code, relating to court reporters. (Applies to Santa Clara County.)

Amended in Senate March 24, 1959.

Amended in Senate May 8, 1959.

CHAPTER 1347**ASSEMBLY BILL 2564 (Marks et al.)**

An act to amend Section 70050.5 of the Government Code, relating to compensation for superior court reporters. (Applies to San Francisco County.)

Amended in Assembly May 22, 1959.

An act to amend ~~Section 70050.5~~ SECTIONS 70050.5 AND 70059.5 of the Government Code, relating to compensation for superior court reporters.

CHAPTER 1836**ASSEMBLY BILL 281 (House)**

An act to add Section 70054.5 to the Government Code, relating to fees of official reporters. (Applies to Imperial County.)

CHAPTER 105**ASSEMBLY BILL 1563 (Nisbet and Beaver)**

An act to amend Section 70055 of the Government Code, relating to filing fees. (Applies to San Bernardino County.)

Amended in Senate June 2, 1959.

CHAPTER 1780**SENATE BILL 1236 (Thompson)**

An act to amend Section 70055.1 of the Government Code, relating to filing fees in the superior court. (Applies to Santa Clara County.)

CHAPTER 1806**ASSEMBLY BILL 257 (Miller)**

An act to amend Section 71083 of the Government Code, relating to municipal and justice courts and judges thereof, declaring the urgency thereof, to take effect immediately.

Amended in Assembly March 12, 1959.

Amended in Assembly March 30, 1959.

CHAPTER 172

ASSEMBLY BILL 1419 (Cameron)

An act to amend Section 71140 of the Government Code, relating to the qualifications of municipal court judges. (Residence.)

Amended in Assembly May 1, 1959.

CHAPTER 1025**ASSEMBLY BILL 1159 (Waldie)**

An act to amend Section 71601 of the Government Code, relating to justice courts. (Qualifying examinations.)

CHAPTER 735**ASSEMBLY BILL 1934 (Willson)**

An act to amend Sections 72709, 72710 and 72712 of the Government Code, relating to court reporters in the Municipal Court, Los Angeles Judicial District.

CHAPTER 1830**ASSEMBLY BILL 2542 (Crown)**

An act to repeal Section 73076, to amend Sections 73086, 73092, 73084.1, 73084.2, 73084.3, 73084.4, 73085.1, 73085.2, 73085.3, 73085.4, 73085.5, 73085.6, 73088, 73089 and 73090 of, and to add Sections 73076, 73093, 73094 and 73095 to, the Government Code, relating to municipal courts in Alameda County.

Amended in Assembly May 29, 1959.

Amended in Senate June 12, 1959.

CHAPTER 2077**SENATE BILL 1140 (Shaw)**

An act to amend Section 74265 of the Government Code, relating to municipal court reporters. (Applies to Oxnard-Port Hueneme and Ventura Municipal Courts.)

Amended in Assembly June 15, 1959.

An act to amend ~~Section 74265~~ SECTIONS 74012, 74013, 74014, 74015, 74015.5, 74018, 74882, 74883, 74884, 74885, 74885.5, and 74888 of the Government Code, relating to municipal ~~court reporters~~ COURTS.

CHAPTER 1923**ASSEMBLY BILL 1562 (Nisbet and Beaver)**

An act to amend Section 74266 of the Government Code, relating to fees to be paid to the court clerk by parties to actions or proceedings. (Applies to San Bernardino Municipal Court.)

Amended in Senate June 2, 1959.

CHAPTER 1779

SENATE BILL 262 (McAteer)

An act to repeal Section 74516 of the Government Code, relating to phonographic reporters.

Amended in Senate May 13, 1959.

An act to AMEND SECTIONS 74502, 74503, 74504 and 74504.5 OF, AND TO repeal Section 74516 of the Government Code, relating to ~~phonographic reporters.~~ THE MUNICIPAL COURT IN THE CITY AND COUNTY OF SAN FRANCISCO.

Committee counsel offered the following comments on the bill as amended:

As introduced the bill proposed to repeal Section 74516 of the Government Code, relating to phonographic reporters. The bill was amended in the Senate on May 13, to prescribe the compensation of certain municipal court attaches. In this form it was pocket-vetoed by the Governor for the reason that "a similar bill was approved."

The bill referred to was AB 1497 (Chapter 1821), which was referred to the Senate Committee on Local Government rather than the Judiciary Committee.

ASSEMBLY BILL 685 (McCollister)

An act to add Section 74705 to the Government Code, relating to reporters of the Santa Rosa Municipal Court. (Applies to Sonoma County.)

Amended in Assembly May 8, 1959.

An act to add ~~Section 74705~~ SECTIONS 70047.5 AND 74705 to the Government Code, relating to ~~reporters of the Santa Rosa Municipal Court.~~ COURT REPORTERS.

CHAPTER 1171

K. HEALTH AND SAFETY CODE

ASSEMBLY BILL 788 (Biddick)

An act to maintain the Health and Safety Code by amending Sections 4121, 4186.30, 4805, 8741, 14219, 14240, 14254, and 24351.3, and by repealing Section 33280 thereof, relating to health and safety.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. Makes no substantive change.

CHAPTER 598

SENATE BILL 335 (Thompson)

An act to amend Section 10036 of the Health and Safety Code, relating to vital statistics. (Records.)

Committee counsel offered the following comments on the measure:

This bill was introduced at the request of the Department of Finance. It permits State Registrar of Vital Statistics, under specified conditions, to destroy certain original records of birth, death, and marriage, rather than deposit such records in archives of the Secretary of State.

CHAPTER 538

SENATE BILL 376 (Grunsky et al.)

An act to add Section 10607 to the Health and Safety Code, relating to access of newspapermen to vital statistics records.

Amended in Senate March 5, 1959.

Amended in Senate March 20, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill was heard on several occasions and deals with the right of newspaper employees to examine vital statistics without the payment of a fee.

Upon previous hearings the discussion centered around whether or not the bill violated any privileged communications by allowing right in absolute terms to inspect these records.

Committee counsel was asked to have the bill amended to limit its terms to a waiver of the fees and this has been done. The bill in its amended form permits newspaper reporters, etc., to inspect vital statistics without charge.

Amended in Senate April 15, 1959.

CHAPTER 873

ASSEMBLY BILL 1801 (Bruce F. Allen)

An act to repeal Sections 11501, 11502, 11712, 11713 and 11714 of, and to amend Sections 11500, 11530, 11557, 11715.5 and 11715.6 of, and to add Sections 1103.1, 11501, 11502, 11503, 11531, 11532 to the Health and Safety Code and to add a new Article 2.5 (commencing with Section 11540) to Chapter 5 of Division 10 of said code, relating to narcotics.

Amended in Assembly May 6, 1959.

An act to repeal Sections 11501, 11502, 11712, 11713 and 11714 of, and to amend Sections 11500, 11530, 11557, 11715.5 and 11715.6 of, and to add Sections 1103.1, 11501, 11502, 11503, 11531, 11532 to the Health and Safety Code and to add a new Article 2.5 (commencing with Section 11540) to Chapter 5 of Division 10 of said code, relating to narcotics, DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY.

CHAPTER 1112**ASSEMBLY BILL 2756 (Waldie et al.)**

An act to amend Sections 11610, 11612, 11614, 11619, 11621, and 11622 of, and to repeal Section 11620 of the Health and Safety Code, relating to the forfeiture of vehicles for the unlawful transportation, depositing, concealment, and possession of narcotics.

Amended in Senate June 16, 1959.

CHAPTER 2085**ASSEMBLY BILL 2128 (Waldie)**

An act to amend Section 11619 of the Health and Safety Code, relating to forfeiture of vehicles for narcotics violations.

Amended in Assembly April 29, 1959.

Amended in Senate June 3, 1959.

An act to amend Section ~~11619~~ 11620 of the Health and Safety Code, relating to forfeiture of vehicles for narcotics violations.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Conflicted with provisions of approved similar bill.” (See AB 2756, Chapter 2085.)

SENATE BILL 1138 (Beard)

An act to add Section 11690 to the Health and Safety Code, and to repeal Section 11689 of said code as added by Senate Bill No. 728 of the 1959 Regular Session, relating to narcotics as evidence.

Committee counsel offered the following comments on the bill as introduced:

Provides, in general, that narcotics illegally seized may nevertheless be used in evidence if they are obtained in any place away from a dwelling house, apartment or other place of abode.

The bill also provides that if passed it supersedes the repeal of the Cahan case as to narcotics contained in SB 728.

Amended in Senate May 25, 1959.

An act to add Section 11690 to the Health and Safety Code, and to repeal Section 11689 of said code as added by Senate Bill No. 728 of the 1959 Regular Session, relating to ~~narcotics as evidence~~ EVIDENCE OF NARCOTIC OFFENSES.

Amended in Senate June 3, 1959.

Remained in Assembly Judiciary—Criminal Procedure Committee.

ASSEMBLY BILL 202 (Bruce F. Allen)

An act to amend Section 1385 of the Penal Code, relating to dismissal of criminal actions. (Prohibits dismissals of allegations of prior convictions.)

Amended in Assembly April 29, 1959.

Amended in Assembly May 6, 1959.

CHAPTER 1772

ASSEMBLY BILL 2738 (Chapel et al.)

An act to add Section 11723 to the Health and Safety Code, relating to narcotic addicts. (Allows tests of defendants for narcotic addiction to be made with defendant's consent.)

Amended in Assembly June 5, 1959.

CHAPTER 1504

SENATE BILL 155 (Beard and Farr)

An act to add Article 4.7 (commencing with Section 11750) to Chapter 7 of Division 10 of the Health and Safety Code, relating to narcotic treatment-control units. (Establishment of control units.)

Amended in Senate March 2, 1959.

CHAPTER 65

ASSEMBLY BILL 1204 (Bradley)

An act to repeal Part 2 (commencing at Section 20500) of Division 14 of the Health and Safety Code, and to add Section 38638 to the Government Code, relating to police protection at public meetings.

Committee counsel offered the following comments on the bill:

Transfers from the Health and Safety Code to the Government Code the requirement of police protection at public meetings in a city. There is no substantive change.

CHAPTER 831

ASSEMBLY BILL 890 (Hawkins et al.)

An act to add Part 5 (commencing at Section 35700) to Division 24 of the Health and Safety Code, relating to discrimination in publicly assisted housing.

Amended in Senate May 5, 1959.

Amended in Senate May 26, 1959.

Amended in Senate June 9, 1959.

CHAPTER 1681

L. INSURANCE CODE

ASSEMBLY BILL 789 (Biddick)

An act to maintain the Insurance Code by amending Sections 1802.71 and 10270 thereof, and by repealing Sections 947 and 11580.1 thereof, relating to insurance. (Provisions in disability insurance policies.)

Committee counsel offered the following comments on the bill:
Codification to maintain codes. Makes no substantive change.

CHAPTER 599

SENATE BILL 274 (Grunsky)

An act to add Section 10177 to the Insurance Code, to add Sections 1137, 1137.1, and 1137.2 to the Probate Code, and to amend Section 13724 of the Revenue and Taxation Code, relating to testamentary trusts of life insurance proceeds.

Committee counsel offered the following comments on the bill as introduced:

Provides, in general, that a life insurance policy may be made payable to a trustee or trustees named or to be named in a will. The proceeds of the policy thereafter are payable to such trustee or trustees.

The bill was suggested originally by Mr. Rooks of the firm of Pillsbury, Madison and Sutro who pointed out that under existing law unless the policy is made payable to a named beneficiary the tax exemption does not apply and that in the creation of trusts many times it was not desirable to name a specific beneficiary but to permit the testator at a later date to create a trustee by will to receive those proceeds and still maintain the tax exemption.

Several hearings were held by the Interim Committee on this bill. The first was on May 5, 1958, and the second on October 7, 1958. At the last hearing, representatives of the California State Association of Life Underwriters and the Life Insurance Association of America made an appearance and generally testified in favor of the bill.

The bill was called to the attention of Mr. James Hickey of the State Inheritance Tax Division, who originally mentioned to the committee that there might be a possible loss of tax revenue. Further inquiry was made of the division and an estimate requested of the amount of revenue, if any, which would be lost by the bill. The response generally given was that this estimate should not be made for a variety of reasons.

On December 5, 1958, the Interim Committee gave a further hearing to the bill and at that time Mr. Rooks appeared and stated that he was under the impression that the objections of the division had been removed by certain revisions which have been incorporated in the bill now before the standing committee.

Also at the December 5 hearing the State Bar and the California Bankers Association expressed some doubts as to the desirability of the bill. However, the California Bankers Association later advised the committee by letter that they had no objections or further suggestions so far as the bill was concerned.

The interim committee at its December 5 meeting generally approved the bill subject to any objections that might be presented by the State Bar at a later date.

On March 3, 1959, the committee was informed that the State Bar had some misgivings about the bill and that revisions are under discussion by the State Bar and Mr. Rooks.

Amended in Senate March 25, 1959.

An act to add Section 10177 to the Insurance Code, to add Sections 1137, 1137.1, and 1137.2 to the Probate Code, and to amend Section 13724 of the Revenue and Taxation Code AND SECTION 381 OF THE PROBATE CODE, relating to testamentary trusts of life insurance proceeds.

Amended in Assembly May 15, 1959.

This bill was vetoed by the Governor for the following stated reasons:

"I am returning, herewith, without my signature, Senate Bill No. 274 entitled: 'An act to add Section 10177 to the Insurance Code, to add Sections 1137, 1137.1, and 1137.2 to the Probate Code, and to amend Section 13724 of the Revenue and Taxation Code and Section 381 of the Probate Code, relating to testamentary trusts of life insurance proceeds.'

"Senate Bill No. 274 permits the designation of testamentary trustees as beneficiaries of life insurance policies, and provides that up to \$50,000 of such insurance shall be exempt from inheritance taxation.

"At present, the proceeds of any life insurance policy payable to the estate, executor, administrator or personal representative of the insured, *or to a trustee* who receives the insurance proceeds to the extent that the proceeds are used for the benefit of the estate, are subject to the inheritance tax.

"There is no reason why insurance payable to a testamentary trustee should be exempt, and that payable to an executor or administrator be taxable. The disposition in such case is directed by the testator through the terms of his will.

"Should this bill become law, it would create another exemption under the inheritance tax law, and open up a loophole by which testators could obtain an additional exemption. Every state, at present, taxes the proceeds of life insurance policies which are *payable to the estate*. At a time when the administration is seeking additional revenue, including that from inheritance taxes, it would not be consistent to approve this measure which would permit a further exemption thereunder.

"I am, therefore, returning Senate Bill No. 274 without my signature."

The veto was sustained by the Senate.

SENATE BILL 389 (Grunsky)

An act to amend Section 11496 of the Insurance Code, relating to incorporation of nonprofit hospitals.

Committee counsel offered the following comments on the measure:

This bill was introduced at the request of the Department of Insurance. It corrects the obsolete cross reference to the Civil Code by substituting the proper reference to the Corporations Code, commencing at Section 9000.

CHAPTER 189

M. LABOR CODE

ASSEMBLY BILL 877 (Miller)

An act to amend Labor Code Section 101, relating to payment of court costs by the Division of Labor Law Enforcement.

This bill was introduced at the request of the Department of Industrial Relations.

CHAPTER 210

ASSEMBLY BILL 302 (Gaffney et al.)

An act to add Section 206.5 to the Labor Code and to add Section 7110.1 to the Business and Professions Code, relating to the payment of wages.

Amended in Assembly March 9, 1959.

Amended in Senate May 21, 1959.

CHAPTER 1066

SENATE BILL 556 (Farr)

An act to amend Section 216 of the Labor Code, relating to failure to pay wages.

CHAPTER 1358

ASSEMBLY BILL 380 (Bane et al.)

An act to amend Section 227 of the Labor Code, relating to employer payments.

Committee counsel offered the following comments on the bill:

Under present law it is a misdemeanor for an employer who has agreed to make payments to a health or welfare fund for the benefit of employees to fail to do so. This bill adds similar provisions for pension funds or vacation plans.

CHAPTER 824

ASSEMBLY BILL 790 (Biddick)

An act to maintain the Labor Code by amending Section 1397.5 thereof, relating to the employment of minors.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. No substantive change.

CHAPTER 600

ASSEMBLY BILL 498 (Waldie et al.)

An act to amend Sections 3858, 3860, 3861 and 3862 of the Labor Code, relating to workmen's compensation.

Committee counsel offered the following comments on the bill as introduced:

Briefly, as introduced, AB 498, proposed to exclude the employee's costs of suit and attorney's fees, with respect to an amount paid or payable by a third person for injuring an employee, as to which the employer may be relieved from the payment of compensation.

Amended in Assembly May 14, 1959.

~~*An act to amend Sections 3858, 3860, 3861 and 3862 of the*~~ AN ACT
TO AMEND SECTIONS 3854, 3858, 3859, AND 3861 OF, TO RE-
PEAL SECTIONS 3856, 3860, AND 3863 OF, AND TO ADD SEC-
TIONS 3856 AND 3860 TO, THE *Labor Code, relating to workmen's*
compensation.

CHAPTER 1255

N. MILITARY AND VETERANS CODE

SENATE BILL 730 (McAteer)

An act to amend Section 393 of the Military and Veterans Code, relating to defense of criminal charges against members of the National Guard.

Committee counsel offered the following comments on the bill:

This measure, introduced at the request of the Department of Justice, merely deletes the requirement that the Attorney General defend the accused in criminal proceedings arising out of military duty.

Under other sections it is the obligation of the Attorney General to prosecute in these cases.

CHAPTER 878

ASSEMBLY BILL 791 (Biddick)

An act to maintain the Military and Veterans Code, by amending Section 1180 thereof, relating to memorial districts.

Committee counsel offered the following comments on the bill:

Codification to maintain codes. Makes no substantive change.

CHAPTER 601

O. PENAL CODE

ASSEMBLY BILL 359 (Francis)

An act to amend Section 7 of the Penal Code, relating to the definition of "book."

Amended in Senate April 9, 1959.

Committee counsel offered the following comments on the bill as amended:

The bill as amended April 9 includes the amendment recommended by the committee.

The bill seeks to define "book" with regard to an arrest and is one of a series providing certain protections to the defendant. Generally, "booking" is defined on page 3, lines 19 through 22, and in the original bill, but it was felt by the subcommittee that the mere taking of fingerprints or photographs unless following an arrest should not be considered as "booking," and so the committee inserted by amendment the words "following an arrest" after the definition.

CHAPTER 404

SENATE BILL 235 (Fisher and Beard)

An act to amend Section 17 of the Penal Code, relating to the definition of crimes as felonies or misdemeanors.

Committee counsel offered the following comments on the bill:

This measure, sponsored by the Department of Youth Authority, covers the situation where an individual is sentenced directly to the custody of the Youth Authority rather than sentenced to either the county jail or a State prison. Such a sentence, by the bill, becomes a misdemeanor if the crime for which the individual is sentenced could have been a misdemeanor by virtue of a court sentence to the county jail.

In other words, it covers a situation where there is neither a sentence to the county jail nor a State prison, but instead a sentence directly to the Youth Authority for a crime that could have been either a felony or a misdemeanor.

CHAPTER 532

SENATE BILL 702 (Grunsky)

An act to add Section 94.5 to the Penal Code, relating to fees and gratuities for performing marriage.

Amended in Senate April 29, 1959.

An act to add Section 94.5 to the Penal Code AND TO ADD SECTIONS 69507 AND 72006 TO THE GOVERNMENT CODE, relating to fees and gratuities for performing marriage.

Committee counsel offered the following comments on the bill as amended:

This is the bill prohibiting the acceptance of gratuities by judges for performing marriage ceremonies. It was heard by a special subcom-

mittee on April 22, 1959, and recommended for passage by the subcommittee with amendments. The amendments agreed upon are as follows:

(1) That the prohibition against a gratuity being accepted by a judge for performing marriage ceremony would not be applicable to marriages performed on Saturdays, Sundays and legal holidays.

(2) That marriage performed by justices of peace should be excluded from the prohibitions contained in the bill.

Amended in Assembly May 15, 1959.

CHAPTER 1589

ASSEMBLY BILL 2053 (Francis)

An act to amend Section 145 of the Penal Code, relating to offenses of public officer with respect to arrested persons.

Committee counsel offered the following comments on the bill as introduced:

As introduced, the bill provided that every public officer who fails to release an arrested person from custody as required by Section 825 or Section 849 of the Penal Code is guilty of a misdemeanor.

Amended in Senate June 5, 1959.

Amended in Senate June 16, 1959.

An act to amend Section 145 of the Penal Code, relating to offenses of public officer OR OTHER PERSON with respect to arrested persons.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Measure was a companion bill to AB 276—three-hour booking—and was ineffective because the latter bill was vetoed."

ASSEMBLY BILL 2549 (Crawford)

An act to add Section 146b to the Penal Code, relating to simulating official inquiries.

CHAPTER 2135

SENATE BILL 845 (Teale)

An act to amend Section 148.1 of the Penal Code, relating to false reports of the secreting of bombs and explosives.

Committee counsel offered the following comments on the bill:

This bill extends the crime of making false reports as to the presence of bombs or other explosives by making it also a felony to make such false bomb scare reports to employees of a telephone company.

CHAPTER 1209

ASSEMBLY BILL 1218 (Bruce F. Allen)

An act to amend Section 190.1 of the Penal Code, relating to offenses for which the penalty is death or life imprisonment.

Committee counsel offered the following comments on this bill:

This is a State Bar Association bill which provides for the following order of trial in homicide cases:

(1) Issue of guilt or innocence.

- (2) Issue of insanity.
- (3) Issue of penalty.

Under present law the issue of penalty is tried prior to the issue of insanity, which the State Bar indicates seems to be a reversal of appropriate proceedings.

CHAPTER 738

ASSEMBLY BILL 1245 (MacBride)

An act to add Section 402 to the Penal Code, relating to the offense of sightseeing at the scene of fires, accidents, and other events.

Amended in Assembly May 27, 1959.

Amended in Assembly June 4, 1959.

Amended in Senate June 12, 1959.

CHAPTER 1876

ASSEMBLY BILL 1180 (Kilpatrick et al.)

An act to amend Sections 447a and 449a of the Penal Code, relating to arson.

Committee counsel offered the following comments on the bill as introduced:

The bill makes the penalty for wilful burning of a trailer coach punishable as arson instead of as wilful burning of personal property. The result is to increase the penalty for this crime.

Amended in Senate June 8, 1959.

CHAPTER 1462

ASSEMBLY BILL 1109 (O'Connell and Crawford)

An act to amend Section 496 of the Penal Code, relating to stolen property.

Committee counsel offered the following comments on the bill:

Adds the requirement of knowledge that the property was stolen to the other requirements for a conviction of withholding or aiding in the concealing of stolen property from the owner.

CHAPTER 734

ASSEMBLY BILL 369 (Waldie)

An act to amend Section 514 of the Penal Code, relating to embezzlement.

Committee counsel offered the following comments on the bill:

Basically, the bill seeks to codify existing case law and to clarify the language of the existing definition of embezzlement. Generally, embezzlement is punishable to the same extent as theft of the value of the property taken. The amendment inserts also the word "kind" of property embezzled since different penalties apply to certain types of property, i.e. stealing a horse is a felony even though by value alone it would only be a misdemeanor.

CHAPTER 581

ASSEMBLY BILL 2650 (Waldie)

An act to amend Section 537 of the Penal Code, relating to defrauding innkeepers. (Evidence.)

Amended in Assembly June 8, 1959.

Amended in Senate June 16, 1959.

CHAPTER 1990**SENATE BILL 456 (Regan)**

An act to amend Section 538e of the Penal Code, relating to misrepresentation in sales of fire fighting equipment.

Committee counsel offered the following comments on the bill:

The bill was advocated for passage by the State Firemen's Association who stated that a problem existed in persons seeking to sell equipment throughout the State upon the representation that the equipment had been approved by fire fighting officials.

The purpose of the bill is to make it a misdemeanor for such representation to be made if false.

CHAPTER 431**ASSEMBLY BILL 341 (Francis et al.)**

An act to add Section 581.5 to the Penal Code, relating to telephone calls by arrested persons.

Amended in Assembly February 18, 1959.

Amended in Assembly February 20, 1959.

An act to add Section ~~581.5~~ 851.5 to the Penal Code, relating to telephone calls by arrested persons.

Amended in Senate April 1, 1959.

Amended in Senate April 16, 1959.

This bill was vetoed by the Governor for the following stated reasons:

"This bill would permit a prisoner immediately upon his booking to make not less than three completed telephone calls.

"I am advised by those who maintain our jails that the enactment of this bill would increase costs for personnel who should be present during such telephone calls, as well as the time consumed by employees in logging the calls.

"In Los Angeles County the installation of additional facilities to comply with the terms of this bill would decrease available jail facilities badly needed because of present overcrowding.

"In addition, the enactment of this legislation would result in delays in transporting prisoners from outlying areas to the central jail in Los Angeles County.

"However, I believe in the principle of the measure, and I would not be adverse to approving a similar measure limited to one such telephone call.

"I understand the author has a bill which could be amended to accomplish this purpose—to-wit, Assembly Bill No. 342, now on the Assembly Inactive File.

"I am, therefore, returning Assembly Bill No. 341 without my signature."

Veto sustained.

SENATE BILL 1076 (Regan)

An act to amend Section 602 of the Penal Code, relating to the crime of trespass.

Committee counsel offered the following comments on the bill as introduced:

The bill amends the law of trespass without the use of firearms by providing that if a person returns to land after having been ordered to leave that he is guilty of a misdemeanor. Under present law if he refuses to leave after being ordered to do so he is guilty of a misdemeanor but no provision is made if he in fact leaves and then returns.

The land to which the bill refers is posted or enclosed land and it is not now a trespass to enter upon such land unless the person does so for the purpose of hunting, shooting, etc. However, as indicated, it is a trespass to remain after having been told to leave.

Amended in Senate May 13, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Unduly restricted hunting and fishing in isolated areas.”

ASSEMBLY BILL 879 (Kilpatrick et al.)

An act to add Section 638 to the Penal Code, relating to equipment employing roentgen rays.

Committee counsel offered the following comments on the bill:

Makes the operation of an X-ray device in viewing bones of the feet unless under the direction of licensed persons in the healing arts a misdemeanor.

The author explained the bill was made necessary because of new equipment, operated by coin devices, which could do damage to the feet unless properly controlled.

CHAPTER 362**ASSEMBLY BILL 2712 (O'Connell et al.)**

An act to repeal Section 647 of, and to add Section 647 to, the Penal Code, relating to criminal offenses. (Redefines vagrancy.)

Amended in Assembly May 28, 1959.

Amended in Senate June 16, 1959.

An act to repeal Section 647 and to add Sections 647 and 647.1 of, and to add Section 647 to, the Penal Code, relating to criminal offenses.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Bill had laudable purpose in eliminating certain status classifications presently punishable as vagrancy. However, removed from police control certain conduct which was dangerous to security of public. Bill goes too far in its sweeping eliminations. Vague and ambiguous in parts.”

ASSEMBLY BILL 8 (Francis et al.)

An act to amend Section 653k of the Penal Code, relating to switch-blade knives.

Amended in Assembly March 5, 1959.

Committee counsel offered the following comments on the bill as amended:

Amends the definition of a switch-blade knife by including knives which flip open as well as those which spring open.

Explained by the author to be necessary to cover a new type of knife being imported from Europe.

CHAPTER 355

ASSEMBLY BILL 2607 (O'Connell et al.)

An act to add Section 812 to Chapter 4, Title 3, Part 2 of the Penal Code, relating to arrest warrants. (Encourages use of warrants where practical.)

Amended in Assembly May 28, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Unnecessary—declares a policy without any implementation."

ASSEMBLY BILL 283 (House and Hanna)

An act to amend Section 823 of the Penal Code, relating to bail of person arrested on warrant of another county.

Committee counsel offered the following comments on the bill as introduced:

Proposes to change the mechanics for handling bail where the person is admitted to bail. Under the present wording of the statute, the magistrate, upon admitting the defendant to bail, delivers the bail to the officer having charge of the defendant. Under this bill, the magistrate causes the bail to be transmitted directly to the court before which the defendant is to appear.

Amended in Senate March 30, 1959.

CHAPTER 133

ASSEMBLY BILL 276 (Francis)

An act to amend Section 825 of the Penal Code, relating to arrests. (Booking of a defendant and visits by attorneys.)

Amended in Assembly February 18, 1959.

Amended in Assembly March 11, 1959.

An act to amend Section 825 SECTIONS 825 AND 849 of the Penal Code, relating to arrests.

Amended in Assembly April 1, 1959.

Amended in Senate May 26, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Administratively unworkable in larger counties; required booking would also cause police records for innocent persons."

ASSEMBLY BILL 342 (Francis et al.)

An act to add Section 851.5 to the Penal Code, relating to telephone calls by arrested persons. (See AB 341.)

Amended in Assembly February 18, 1959.

Amended in Senate June 8, 1959.

CHAPTER 1862**ASSEMBLY BILL 344 (Francis et al.)**

An act to add Section 851.5 to the Penal Code, relating to telephone calls by arrested persons.

Amended in Assembly February 18, 1959.

Amended in Senate June 8, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Administrative problems involved; similar bill allowing one completed call approved.”

ASSEMBLY BILL 2492 (Francis)

An act to add Chapter 5C (commencing with Section 853.6) to Title 3, Part 2, of the Penal Code, relating to citations for misdemeanors under state law.

Committee counsel offered the following comments on the bill as introduced:

Provides that where a person is arrested for a misdemeanor and does not demand to be taken before a magistrate, the arresting officer may issue a written notice to appear. The notice must specify a time of at least five days after the arrest. The arrested person must sign a duplicate notice promising to appear, and he may, prior to the day he has promised to appear, deposit with the magistrate the amount of the bail which has been set. If he does not appear, the magistrate may declare the bail forfeited.

Violation of the promise to appear is a misdemeanor and a warrant may be issued for his arrest. This warrant for arrest shall be issued and delivered by the magistrate within 20 days after failure to appear.

CHAPTER 1558**ASSEMBLY BILL 2371 (O'Connell and Waldie)**

An act to amend Sections 858 and 859 of the Penal Code, relating to notification to parent or guardian of arrest of child or ward.

Amended in Senate June 16, 1959.

CHAPTER 2185**SENATE BILL 1360 (Beard)**

An act to amend Section 869 of the Penal Code, relating to transcripts of testimony in homicide cases.

Committee counsel offered the following comments on the bill:

This bill was submitted to the Governor as introduced. It provided that in homicide cases, the magistrate at the preliminary hearing may, if there is good cause, extend for not to exceed 15 days the time other-

wise allowed to the reporter for transcribing his notes and filing a transcript of the testimony of a witness.

This bill was pocket-vetoe'd by the Governor for the following stated reason:

"Measure would slow the administration of justice."

ASSEMBLY BILL 404 (Bradley and Dahl)

An act to repeal Title 4 (commencing with Section 894) of Part 2 of the Penal Code, to add Title 4 (commencing with Section 888) to Part 2 of the Penal Code, to repeal Section 169 of the Penal Code, to repeal Sections 65.2, 241, 242, and 243 of the Code of Civil Procedure, to repeal Section 12551 of the Government Code, to amend Sections 192, 196, 199, 204, 204b, 204c, 204d, 205, 206, 209, 211, and 238 of the Code of Civil Procedure, to amend Sections 167, 168, and 1326 of the Penal Code, and to amend Section 12552 of the Government Code, relating to grand juries.

Committee counsel offered the following comments on the bill as introduced:

This is a Law Revision Commission bill which was heard by the interim committee and approved for passage by the standing committee.

Generally, the bill is a recodification of the law relating to grand juries.

The following explanation of the measure is an excerpt from the report of the California Law Revision Commission:

"Resolution Chapter 266 of the Statutes of 1957, introduced by Honorable Walter I. Dahl, Member of the Assembly for the 16th Assembly District, directed the Commission 'to consider and study the feasibility of codifying and clarifying, without making substantive change, all provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code.'

"The Commission entered into a contract with the Legislative Counsel to have him draft for the Commission's consideration such legislation as would be necessary to achieve this objective. Working with the Legislative Counsel the Commission has drafted a bill which will, if enacted, place substantially all statutes relating to grand juries in a new Title 4, Part 2 of the Penal Code. Copies of this bill have been sent to the Attorney General and to district attorneys, superior court judges and jury commissioners throughout the State with an invitation to send the Commission their questions, comments, criticisms and suggestions. All responses to this invitation will be given careful consideration by the Commission before the bill is placed in final form. It is contemplated that this procedure will be completed in time to permit a bill on this subject to be introduced in the 1959 Session of the Legislature.

"The bill which will be introduced will improve the statutory law relating to grand juries by bringing it together and clarifying it in certain respects. However, the bill will not undertake to clarify and modernize this body of law completely, in view of the provision in Resolution Chapter 266 that no 'substantive change' should be made in

the course of the Commission's work. By reason of this limitation the Commission has refrained from recommending any change which might be construed to be substantive in nature, even in instances where it considered that the particular change was desirable and noncontroversial."

Amended in Senate May 4, 1959.

CHAPTER 501

SENATE BILL 1074 (Regan et al.)

An act to amend Section 1050 of the Penal Code, relating to continuances in criminal cases, declaring the urgency thereof, to take effect immediately. (Continuances for attorney-legislators.)

This bill was vetoed by the Governor for the following stated reasons:

"I am returning, herewith, without my signature, Senate Bill No. 1074, an act relating to continuances in criminal cases.

"My objections to this bill are as follows:

"Senate Bill No. 1074 would require a mandatory continuance of a criminal case where the defendant is represented by an attorney who is a member of the State Legislature, provided the defendant consents thereto. Continuance would extend throughout the legislative session and 30 days thereafter. It would also apply during such times as a Member of the Legislature is serving on a legislative committee.

"This measure could unduly delay the trial of criminal matters for a period exceeding six months. The ends of justice require that there be a speedy disposition of criminal cases. Our law declares that such cases should be set for trial not later than 30 days after the date of entry of the plea of the defendant, and should not be extended unless it can be shown that the ends of justice would require such extension. Extended litigation makes it more difficult to secure witnesses, and dims the recollection of facts involved in testimony produced in court.

"The present law attempts to take cognizance of the plight of attorney-legislators by granting them a 30-day continuance if the Legislature is in session or if a legislative committee is meeting within seven days of the date set for the appearance of the defendant in court. Legislators who are attorneys are thus given some consideration.

"I am not unmindful of the fact that attorneys who are legislators suffer financially in the practice of law because of their legislative duties. I am in favor of higher remuneration for legislators because of this fact. In rendering public service they, as well as other members of the Legislature, must, of necessity, take time away from their private endeavors which results in a loss of income to them.

"However, I am a firm believer that defendants should be given a fair and *speedy* trial. This measure could result in delays of justice.

"I am, therefore, returning Senate Bill No. 1074 without my signature."

The veto was sustained.

SENATE BILL 614 (Richards)

An act to amend Sections 1050 and 1382 of, and to repeal Section 681a of, the Penal Code, relating to the time within which a criminal prosecution must be brought to trial.

Amended in Senate April 7, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill is sponsored by the Judicial Council. It was previously before the full committee and was continued to this date for further consideration, particularly with reference to suggested amendments.

The bill repeals Section 681a of the Penal Code which now merely provides, in general, that it is the duty of the courts and the district attorneys to expedite determination of criminal matters as soon as possible. With a few minor language changes, existing law is substantially set forth beginning on line 3 of the amended bill, and with the word "justice" on line 9. In other words, it appears that the substance of Section 681a is being incorporated into an amended Section 1050.

At the previous hearing amendments were discussed dealing primarily with what constitutes "implied consent" of the defendant to a continuance beyond the statutory limit for trial. Committee counsel was requested to have amendments prepared providing, in substance, that the defendant shall not be deemed to impliedly consent if he merely sits mute unless the court has first explained to him his rights under the section and the effects of his consent to a continuance.

The bill as amended April 7, 1959, seeks to solve this problem but is limited to situations where the defendant is not represented by counsel.

CHAPTER 1693**ASSEMBLY BILL 1775 (Thelin)**

An act to amend Section 1195 of the Penal Code, relating to bail.

Committee counsel offered the following comments on the bill as introduced:

Generally provides for exoneration of bail where the defendant appears for judgment and judgment is pronounced.

CHAPTER 1187**SENATE BILL 465 (Regan)**

An act to add Section 1202b to the Penal Code, relating to youthful offenders.

Amended in Senate April 16, 1959.

Committee counsel offered the following comments on the bill as amended:

Deals with criminals who are under the age of 23 years and who, upon conviction, are committed to the custody of the Director of Corrections. Under these circumstances the court may fix the minimum term of imprisonment at six months, regardless of any other provision of law fixing a minimum term for the particular offense.

The Department of Corrections requested the bill in order to permit the court in dealing with persons of this age to conform commitments

to the Department of Corrections to the present law regarding commitments to the Youth Authority of persons the same age.

The amendment proposed by the subcommittee deals with the date upon which the age of the defendant shall be computed. Under the original bill this date was fixed at the age at the time of apprehension for the crime. Under the amended bill the alternative is provided for the date to be fixed at the time of the commission of the offense, allowing this additional discretion to the court.

CHAPTER 916

ASSEMBLY BILL 1926 (Petrís)

An act to amend Section 1203.1 of the Penal Code, relating to probation. (Length of probation.)

Amended in Assembly April 15, 1959.

CHAPTER 1016

ASSEMBLY BILL 1203 (Bradley)

An act to amend Sections 1208 and 4532 of the Penal Code, relating to the offense of failure of a prisoner released from jail during working hours to return to the jail.

Amended in Assembly March 25, 1959.

Amended in Senate June 4, 1959.

CHAPTER 1463

ASSEMBLY BILL 792 (Biddick)

An act to maintain the Penal Code by amending Section 1227 thereof, and by repealing Sections 23, 438, and 441 thereof, relating to crimes and punishment.

Committee counsel offered the following comments on the bill:

Makes no substantive change and is a codification to maintain codes.

CHAPTER 602

ASSEMBLY BILL 1850 (O'Connell)

An act to amend Section 1227 of the Penal Code, relating to executions of judgments of death.

Amended in Assembly April 15, 1959.

Amended in Senate June 16, 1959.

An act to amend Section 1227 of , AND TO ADD SECTION 209.5 TO, the Penal Code, relating to ~~executions of judgments of~~ KIDNAPING AND OTHER OFFENSES PUNISHABLE BY death.

This bill was pocket-vetoe'd by the Governor for the following stated reason:

"Would have further prolonged the period after conviction for filing of habeas corpus application and review procedure following such application."

ASSEMBLY BILL 2491 (Francis)

An act to amend Section 1269b of the Penal Code, relating to bail.

Provides the addition of the clerk of the superior court to those who may accept bail; requires judges to adopt a countywide uniform bail schedule.

Amended in Senate June 3, 1959.

CHAPTER 1396**SENATE BILL 786 (Farr)**

An act to amend Section 1269b of the Penal Code, relating to the acceptance of bail.

Committee counsel offered the following comments on the bill as introduced:

This bill requires the adoption of a countywide uniform bail schedule instead of the present requirement of separate bail schedules in each judicial district.

CHAPTER 715**ASSEMBLY BILL 1776 (Thelin)**

An act to amend Sections 1278, 1287, 1458, and 1459 of the Penal Code, relating to undertakings of bail.

Committee counsel offered the following comments on the bill as introduced:

Generally, the bill amends the form of the bail bond to require that the defendant appear for a grant of probation as well as for pronouncement of other judgment.

CHAPTER 1188**SENATE BILL 148 (Grunsky)**

An act to amend Section 1295.5 of the Penal Code, relating to bail and deposits instead of bail.

Amended in Senate March 4, 1959.

An act to amend Section ~~1295.5~~ 1269b of the Penal Code, relating to bail and deposits instead of bail.

Committee counsel offered the following comments on the bill as amended:

As amended, the bill adds the clerks of the Superior Court in which a case is pending as a person entitled to approve and accept bail to the other officers now permitted by law to release the defendant on bail upon the filing of a bond, the form of which has been previously approved by a judge of the Superior Court.

Passage of the bill was advocated by representatives of the bail bond interests who stated, in substance, that it was made necessary by virtue of a ruling of the Attorney General to the effect that in these circumstances the clerk could not approve bail even though the form of the bond had already been approved and the amount of the necessary bail fixed.

CHAPTER 527

ASSEMBLY BILL 2774 (Backstrand)

An act to amend Section 1306 of the Penal Code, relating to bail.

CHAPTER 2005

ASSEMBLY BILL 2370 (Munnell)

An act adding Article 9 (commencing with Section 1318) to Chapter 1 of Title 10 of Part 2 of the Penal Code, relating to the release of defendants on their own recognizance.

Committee counsel offered the following comments on the bill:

Provides the courts may release defendants on their own recognizance; makes it a misdemeanor to willfully fail to appear when due on a misdemeanor charge or a felony on a felony charge.

CHAPTER 1340

SENATE BILL 219 (Arnold)

An act to amend Section 1326 of the Penal Code, relating to subpoenas in criminal cases.

Committee counsel offered the following comments on the bill as introduced:

The basic intent of the bill appears to be to authorize district attorneys to issue subpoenas in inferior court matters.

It was stated that district attorneys now have the right to issue subpoenas in Superior Court matters and that this bill merely extended that right to inferior court matters.

Amended in Assembly May 28, 1959.

CHAPTER 1058

SENATE BILL 247 (Short)

An act to amend Section 1370 of the Penal Code, relating to verdict as to insanity of defendants.

Committee counsel offered the following comments on the bill as introduced:

The measure was recommended by the Department of Mental Hygiene. It covers the situation of an insane defendant during pendency of a trial. If he is committed to a State hospital for a crime which is later dismissed, the commitment to the State hospital would, in effect, amount to a commitment as a mentally ill person and thereafter the defendant would be treated as such regardless of the dismissal of the criminal charges.

CHAPTER 228

SENATE BILL 666 (Richards)

An act to amend Section 1417, and to repeal Section 1418 of, and to add Sections 1418 and 1418.5 to, the Penal Code, relating to disposal of exhibits in criminal cases.

Amended in Assembly June 16, 1959.

An act to amend Section 1417, and to repeal Section 1418 of, and to add Sections 1418 ~~and 1418.5~~, 1418.5, AND 1418.6 to, the Penal Code, relating to disposal of exhibits in criminal cases.

CHAPTER 1849

SENATE BILL 648 (Cobey)

An act to amend Section 1505 of the Penal Code, relating to the writ of habeas corpus. (Failure to obey writ.)

CHAPTER 559

SENATE BILL 463 (Dolwig)

An act to amend Section 1506 of the Penal Code, relating to appeals in habeas corpus proceedings.

Amended in Senate March 30, 1959.

An act to amend Section 1506 of, AND TO ADD SECTION 1507 TO, the Penal Code, relating to appeals in habeas corpus proceedings.

CHAPTER 553

SENATE BILL 1482 (Richards)

An act to amend Section 1547 of the Penal Code, relating to rewards for apprehension.

Amended in Assembly June 19, 1959.

CHAPTER 1946

ASSEMBLY BILL 944 (Crown et al.)

An act to amend Section 1550.1 of the Penal Code, relating to hearings in extradition proceedings.

Committee counsel offered the following comments on the bill as introduced:

Deals with applications for writ of habeas corpus by persons for whom extradition is requested by another state. Under present law the accused may test the legality of his arrest by a writ of habeas corpus and the bill provides that if that writ is denied, but it appears that there is probable cause for the application of a writ to another court, the order denying the original application shall fix a reasonable time within which the accused may apply to the other court.

CHAPTER 725

SENATE BILL 241 (Rodda)

An act to amend and renumber Section 2047 of the Penal Code, relating to rules and regulations governing conduct of prisoners.

CHAPTER 933

ASSEMBLY BILL 1871 (Bane)

An act to amend Section 3075 of the Penal Code, relating to the county board of parole commissioners.

Amended in Assembly April 29, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides that the public member of the county board of parole commissioners shall be entitled to travel expenses and per diem compensation at such rate as may be provided by the board of supervisors. The bill as amended also fixes the term of the public member of the board at four years.

Amended in Senate June 8, 1959.

CHAPTER 1314

SENATE BILL 1474 (Farr)

An act to add Section 4017.5 to the Penal Code, relating to the employment of county jail prisoners.

Committee counsel offered the following comments on the bill as introduced:

Permits the board of supervisors of a county to contract with the State or with the United States for the performance of fire suppression work by inmates of the county jail.

Amended in Senate May 25, 1959.

Amended in Senate June 1, 1959.

An act to add Section 4017.5 to AMEND SECTION 4125.1 OF the Penal Code, relating to the employment of county jail prisoners.

CHAPTER 1660

SENATE BILL 1394 (Fisher)

An act to add Section 4019.3 to the Penal Code, relating to work credit for prisoners in county jails.

CHAPTER 1226

ASSEMBLY BILL 2619 (Backstrand)

An act to amend Sections 4250 and 4252 of the Penal Code, relating to blood donations by prisoners.

CHAPTER 1401

SENATE BILL 193 (McCarthy)

An act to amend Section 4500 of the Penal Code, relating to penalties for assaults by prison inmates.

Amended in Senate March 12, 1959.

Committee counsel offered the following comments on the bill as amended:

Passage of the bill was advocated by the District Attorney of Marin County to allow some discretion on the part of the trial court or jury in the fixing of a penalty in cases of assault with a deadly weapon by prisoners.

Under present law the punishment is death, but under the bill, where the victim does not die within one year and a day, the trial court may, in its discretion, make the penalty life imprisonment, without possibility of parole.

Further testimony, however, indicated that in order to bring the punishment in conformity with related crimes, the imprisonment (if that is chosen by the trial court) shall be without possibility of parole for nine years. Such an amendment was adopted by the committee, and the bill as amended March 12, 1959, contains that provision.

Amended in Assembly May 7, 1959.

CHAPTER 529

SENATE BILL 399 (McCarthy)

An act to amend Section 4501 of the Penal Code, relating to assaults by state prison inmates.

Amended in Senate March 12, 1959.

An act to amend Section 4501 of, AND TO ADD SECTION 4501.5 TO, the Penal Code, relating to assaults by state prison inmates.

Committee counsel offered the following comments on the bill as amended:

This measure was introduced at the request of the Department of Corrections.

Present law provides that assault with a deadly weapon by an inmate of a prison shall be a felony. The bill as originally introduced changed this to provide the same penalty for a simple assault, that is, an assault without a deadly weapon.

The main reason for the change in the present law, according to the sponsors of the bill, is the difficulty of proving malice aforethought, and accordingly the committee determined that the words "with malice aforethought" should be deleted from the present law to make it easier to convict in cases of assault with a deadly weapon. However, the committee believed that this penalty was too great for a simple assault as between prisoners because of testimony substantially to the effect that various types of altercations were going on all the time between prisoners, and unless they were done with something in the nature of a deadly weapon, the committee did not desire to make a felony out of these offenses. However, the committee did feel that some additional penalty should be provided for simple assault against guards or other "nonprisoners" by inmates. They accordingly suggested that further amendment to this bill be made to make such simple assaults a felony. This was found necessary by virtue of the present law which provides a county jail sentence for a simple assault, the administration of which becomes ridiculous when applied to a person serving time in a state prison.

Amended in Assembly May 13, 1959.

CHAPTER 794

SENATE BILL 299 (Farr)

An act to amend Section 4573 of the Penal Code, relating to narcotics in prisons and other correctional institutions.

This measure was introduced at the request of the Department of Corrections.

Amended in Senate March 25, 1959.

Committee counsel offered the following comments on the bill as amended:

Heard by committee on April 2 and postponed for one week with instructions that inquiry be made of the Legislative Counsel as to whether there is a conflict between the provisions of this bill relating to alcoholic beverages and Section 172 of the Penal Code on the same subject.

Legislative Counsel does not believe that there is a conflict between this bill and the provisions of Penal Code Section 172 for the following reasons:

(1) This bill relates to bringing or sending into prisons or other places where prisoners are located under the custody of prison officials any alcoholic beverage and provides that a violation of that prohibition is a felony.

(2) Penal Code Section 172, on the other hand, relates to sales or gifts of alcoholic beverages within certain prescribed distances (one-half mile as to state prisons and 1,900 feet from reformatories) from certain governmental facilities. Violation of this section is a misdemeanor and mere possession is made *prima facie* evidence of a violation.

Penal Code Section 172, however, excepts from its prohibition wine and beer containing not more than 3.2 percent of alcohol.

CHAPTER 662

SENATE BILL 300 (Farr)

An act to amend Section 4574 of the Penal Code, relating to firearms in prisons and other correctional institutions.

Amended in Senate March 26, 1959.

CHAPTER 663

SENATE BILL 908 (Holmdahl)

An act to amend Section 12027 of the Penal Code, relating to concealed carrying of firearms.

Committee counsel offered the following comments on the bill as introduced:

The bill exempts full time peace officers in other states and of the federal government from the prohibition against carrying firearms.

CHAPTER 1854

SENATE BILL 1002 (Holmdahl)

An act to amend Section 12052 of the Penal Code, relating to the issuance of licenses to carry concealed firearms.

Committee counsel offered the following comments on the bill as introduced:

The bill simplifies the procedure for forwarding fingerprints etc. to the State Bureau of Criminal Identification after application to an agency for a permit to carry a concealed weapon. Among other things, the amendments proposed to the section prohibit the issuance of a license to carry a concealed weapon by a local agency until after the State Identification Bureau has received the applicant's fingerprints etc. and made a report thereon back to the local agency.

The bill further provides that after a person has been checked as a result of a first application, complete fingerprints etc. need not be forwarded for renewal applications.

CHAPTER 1856**SENATE BILL 911 (Holmdahl)**

An act to amend Section 12076 of the Penal Code, relating to the sale of concealable firearms.

Amended in Senate April 23, 1959.

Committee counsel offered the following comments on the bill as amended:

This bill deals with the requirement of registration at the time of purchase of pistols or other firearms capable of being concealed on the person.

In substance, the bill makes it a misdemeanor to give a fictitious name or address in registering the purchase of such a firearm.

CHAPTER 1855**SENATE BILL 57 (Richards)**

An act to amend Section 12077 of the Penal Code, relating to records of pistol or revolver sales.

Committee counsel offered the following comments on the measure as introduced:

The bill originated in the office of the County Clerk of Los Angeles County. It was explained that under present law, sales of firearms in unincorporated areas are registered with the county clerk but that the county clerk has no need for this information and that it should be filed with the Sheriff's Office, which would make the situation comparable with sales of firearms in incorporated areas where the registration of firearms is made with the Chief of Police.

The change of place in filing in unincorporated areas from the office of the county clerk to the sheriff's office is the only change in the bill.

CHAPTER 383**SENATE BILL 952 (Holmdahl)**

An act to amend Section 12201 of the Penal Code, relating to possession of machineguns.

Amended in Senate April 29, 1959.

An act to amend Section 12201 of the Penal Code, relating to possession of machineguns.

Committee counsel offered the following comments on the bill as amended:

The intention of the bill was to limit the purchase and possession of machineguns to full-time employees of police departments and sheriff or city marshals and military personnel.

However, in discussing the bill the Committee noted that no distinction was made between purchase and possession of these weapons and felt that no individual person, even though a peace officer, should be

entitled to purchase a machinegun. Such purchase should be limited to official government agencies and possession of the weapon limited to the use of the personnel of these departments within the scope of their employment.

Amended in Senate May 5, 1959.

Amended in Assembly June 10, 1959.

CHAPTER 1646**ASSEMBLY BILL 2054 (Frew and Garrigus)**

An act to add Chapter 6 (commencing with Section 12550) to Title 2, Part 4, of the Penal Code, relating to firearms.

Committee counsel offered the following comments on the bill as introduced:

Prohibits the sale of any firearms to minors under age of 18 without the written consent of parent.

CHAPTER 1232**ASSEMBLY BILL 1448 (Crawford)**

An act to add Title 4 (commencing with Section 13500) to Part 4 of the Penal Code, relating to standards and training of local law enforcement officers, and making an appropriation.

Amended in Assembly March 25, 1959.

An act to add Title 4 (commencing with Section 13500) to Part 4 of the Penal Code, relating to standards FOR RECRUITMENT and training of local law enforcement officers, and making an appropriation.

Amended in Senate May 21, 1959.

Amended in Senate June 1, 1959.

Amended in Senate June 12, 1959.

Amended in Senate June 15, 1959.

CHAPTER 1823

P. PROBATE CODE

ASSEMBLY BILL 2289 (Bradley)

An act to amend Section 162 of and to add Section 162.5 to the Probate Code, relating to income earned during probate.

Amended in Senate June 16, 1959.

CHAPTER 1882

SENATE BILL 272 (Grunsky et al.)

An act to amend Sections 480 and 1802 of the Probate Code and Sections 106, 1581, 1586 and 1587 of the Financial Code, relating to conservatorship.

Committee counsel offered the following comments on the bill as introduced:

This is a proposal to amend conservatorship law to provide for posting of a bond *prior* to issuance of letters of conservatorship as is presently required of all other fiduciaries in guardianships and testamentary matters and to amend several sections of Financial Code to make express reference to conservators.

Present law requires conservator to post a bond before acting as such rather than prior to issuance of letters of conservatorship.

Proposed by California Bankers Association as corrective legislation, with written explanation that a conservator could deplete an estate with assistance of letters he has obtained prior to obtaining a bond and uncertainty of law as to whether county clerks have authority to issue letters to conservator without a bond having first been filed.

The State Bar advised Committee by letter dated December 3, 1958, that at the board's last meeting it had no objections to the proposed amendments at that time.

Amended in Assembly April 17, 1959.

CHAPTER 391

SENATE BILL 168 (Regan)

An act to amend Sections 605, 607 and 608 of the Probate Code, relating to the appointment of appraisers.

The Legislative Representative of the State Bar Association explained the bill as introduced:

This proposal grew out of the investigation of abuses in the appointment of extra appraisers by the San Francisco Probate Court. Probate Code Section 605 presently provides that the Probate Court may upon the request of the executor or administrator appoint two additional appraisers besides the official inheritance tax appraiser. The Joint Judiciary Committee's investigation uncovered the fact that the Probate Court clerk was pressuring attorneys to consent to the appointment of two extra appraisers and then getting a kickback from the extra appraisers appointed. The clerk was thus supplementing his income by \$7,000 to \$8,000 a year.

The practice of appointing extra appraisers is confined only to San Francisco. It has not been followed elsewhere for a number of years. The extra appraisers serve no real purpose because the actual appraisal is done by the inheritance tax appraisers and, with a few exceptions, the extra appraisers merely signed their names to the inventory and appraisal and collected their fees. The extra appraisers receive the same fee as the official appraiser, thus burdening the estate with the payment of an unnecessary expense.

The bill under consideration was proposed by the San Francisco Bar Association in 1955. It has been approved by the Conference of State Bar Delegates, by the State Bar's Committee on Administration of Justice, and has the support of the Board of Governors of the State Bar.

Amended in Assembly May 22, 1959.

Amended in Assembly June 12, 1959.

CHAPTER 1749

SENATE BILL 855 (Regan)

An act to amend Section 607 of, and to add Section 609.5 to, the Probate Code, and to add Section 14773.5 to the Revenue and Taxation Code, relating to inheritance tax appraisers.

Amended in Senate March 26, 1959.

Committee counsel offered the following comments on the bill as amended:

Requires the apportionment between appraisers of the total allotted appraisal fee in probate cases where it is necessary to have more than one appraiser because of property located in a county different from the county in which the estate is being probated.

Amended in Senate May 7, 1959.

Amended in Assembly June 13, 1959.

CHAPTER 1917

ASSEMBLY BILL 231 (McMillan)

An act to amend Section 630 of the Probate Code, relating to summary probate proceedings.

CHAPTER 195

ASSEMBLY BILL 1492 (Busterud et al.)

An act to amend Sections 640, 645 and 646 of the Probate Code, relating to the administration of estates.

Amended in Assembly April 27, 1959.

Committee counsel offered the following comments on the bill as amended:

Increases from \$2,500 to \$3,500 the amount of a decedent's estate that may be set aside to the surviving spouse or minor children without administration.

CHAPTER 1290

ASSEMBLY BILL 1271 (O'Connell and Bruce F. Allen)

An act to amend Section 709 of the Probate Code, relating to the filing of claims with an executor or administrator.

CHAPTER 1815

ASSEMBLY BILL 1585 (Thelin)

An act to add Section 771.5 to the Probate Code, relating to the sale of subscription rights without prior court approval.

Amended in Senate May 29, 1959.

CHAPTER 1185

ASSEMBLY BILL 1141 (Biddick et al.)

An act to amend Section 780 of the Probate Code, relating to sale of real property. (Publication of probate sales.)

CHAPTER 907

ASSEMBLY BILL 576 (Bradley)

An act to amend Section 787 of the Probate Code, relating to a sale made upon a credit by an executor or administrator.

Amended in Assembly April 3, 1959.

CHAPTER 1266

SENATE BILL 583 (Farr)

An act to amend Section 1067 of the Probate Code, relating to estates of deceased persons.

Committee counsel offered the following comments on the bill:

This measure, which was introduced at the request of the State Controller, provides after property has been turned over to the State of California as an escheat if there is a subsequent petition for letters of administration a copy thereof must be sent to the State Controller.

Amended in Senate May 7, 1959.

CHAPTER 1138

ASSEMBLY BILL 2169 (Marks)

An act to amend Section 1120 of, and add Section 1120.1 to, the Probate Code, relating to testamentary trusts.

CHAPTER 864

ASSEMBLY BILL 1999 (Z'berg)

An act to amend Section 1147 of the Probate Code, relating to public administrators.

Amended in Assembly April 17, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides that in counties having population exceeding 270,000, rather than 2,000,000, withdrawals of moneys of an estate from the county treasury or from the bank may be made by the public administrator without countersignature of a judge.

CHAPTER 1200

ASSEMBLY BILL 1142 (Biddick et al.)

An act to amend Section 1405 of the Probate Code, relating to guardians.

Committee counsel offered the following comments on the bill as introduced:

This is a State Bar bill which allows the court discretion in appointing cognardians to require either a separate bond from each or a joint and several bond.

Amended in Senate May 29, 1959.

CHAPTER 1459**ASSEMBLY BILL 516 (Masterson)**

An act to amend Section 1431 of the Probate Code, relating to claims of minors.

Amended in Assembly March 6, 1959.

Committee counsel offered the following comments on the bill as amended:

Generally, the bill refers to settlement of disputed claims by minors and the disposition of funds received from those settlements.

Under present law when the court approves a compromise it may, without a bond, permit the money to be paid to the father or mother of the minor or the court may order the money to be deposited in a bank account or a savings and loan account for the minor. Present law limits the handling of settlements of this type to those not exceeding \$2,000.

The bill would increase the amount permitted to be handled in this fashion to \$10,000 and in addition make it mandatory that the cash funds so received be deposited in a bank for the account of the minor.

CHAPTER 684**SENATE BILL 212 (Regan)**

An act to repeal Sections 1435.4, 1435.5, 1435.6, 1435.7, 1435.8, 1435.9, 1435.10, 1435.11, 1435.12, 1435.13, 1435.14, 1435.15, 1435.16, 1435.17, 1435.18, 1435.19, 1435.22, 1435.24, 1435.25, 1435.26, 1435.27, 1435.28, 1435.29, 1435.30, 1435.31, 1435.33, 1435.37, and 1435.39 of the Probate Code, and to amend Sections 1435.1, 1435.2, 1435.3, and 1529 of said code, and to amend and renumber Sections 1435.20, 1435.21, 1435.23, 1435.32, 1435.34, 1435.35, 1435.36, and 1435.38 of said code, and to add Sections 1435.4, 1435.5, 1435.9, 1435.15, 1435.16, 1435.17, and 1435.18 to said code, and to amend Sections 172, 172a, 1242, and 1243 of the Civil Code, and to add Section 172b to said code, relating to transfer and encumbrance of community and homestead property when a spouse is incompetent.

Amended in Senate February 26, 1959.

Committee counsel offered the following comments on the bill as amended:

This is a proposal of the California Land Title Association to amend the law relating to the disposal of community and homestead property when one or both of the spouses is incompetent.

The detailed reasons for the bill are set forth in a memorandum dated March 1, 1958 by Lawrence L. Otis commenting upon a proposal of the Lawyers' Club of Los Angeles. Copies of this memorandum have been provided each of the members of the committee.

Generally, the bill seeks to amend a series of code sections involving homestead and community property to provide for its disposal in the event of incompetency. Under the present law, homestead and community property cannot be disposed of without the voluntary act of both spouses and, of course, an incompetent spouse cannot so voluntarily consent. The procedure in the present law allowing the competent spouse to file a petition before the court with appropriate service upon the guardian of the incompetent spouse and thereafter for the court to make its order authorizing the transfer of the property, is expanded and rewritten.

Provision is made for bonds and similar protection of the incompetent spouse. Upon the receipt of this order, authority is specifically given to the petitioning spouse to execute the necessary documents to effectuate the transfer. Similar petitions may also be filed by the guardian of one or both incompetent spouses in order to authorize the transfer of the homesteaded property. The bill also provides an alternative procedure for the handling of this type property in conventional guardianship proceedings.

This bill was heard by the interim committee on February 4, 1959, and a series of amendments suggested by that committee. The bill, as amended in the Senate on February 26, 1959, reflects those suggested amendments which primarily involve changing the word "shall" in several situations to the word "must" when dealing with the required consent of a spouse on the theory that the word "shall" might be interpreted to require that the consent be given whereas the word "must" more truly reflects the intent of the statute that the transaction may not proceed without the consent, but there is no obligation on the part of the spouse to give it. In this connection the use of the word "must" was suggested by the provisions of Section 172a of the Civil Code.

Other committee amendments are found on page 8 of the bill as amended, which merely conform to language customarily used for cross-reference purposes.

CHAPTER 125

ASSEMBLY BILL 401 (Bradley)

An act to amend Sections 1460, 1461, and 1570 of the Probate Code, relating to appointment of guardians for minors and insane and incompetent persons.

Amended in Assembly March 30, 1959.

Committee counsel offered the following comments on the bill as amended:

Amends various sections of the Probate Code relating to the appointment of guardians for minors and incompetent persons. Most of the amendments are technical in character but in addition, the present law is amended so as to limit the proceedings for the appointment of guardians of incompetent persons to those who are resident in the State.

The bill also would allow persons interested in the incompetent's estate to file a petition alleging the incompetency.

Amended in Senate May 4, 1959.

CHAPTER 500**SENATE BILL 977 (Stiern)**

An act to amend Section 1461 of the Probate Code, relating to appearance of alleged insane or incompetent person at hearing for appointment of guardian.

Committee counsel offered the following comments on the bill as introduced:

This bill was approved by subcommittee on April 15, 1959, and excuses the attendance of an alleged insane person if his presence in court would be physically harmful to him.

This is an extension of present law, which only excuses his attendance if he is physically unable to appear.

The proceedings to which this bill refers are proceedings for the appointment of a guardian of an insane or incompetent person.

Amended in Senate May 6, 1959.

Amended in Senate June 5, 1959.

CHAPTER 1369**ASSEMBLY BILL 2633 (Sumner)**

An act to amend Sections 1500 and 1590 of the Probate Code, relating to guardianship.

Committee counsel offered the following comments on the bill as introduced:

This bill was introduced at the request of the Land Title Association to clear up the question of an incompetent's power to convey after his restoration to capacity and the right of the guardian to convey after restoration but before discharge.

Amended in Senate June 16, 1959.

CHAPTER 1983**ASSEMBLY BILL 577 (Bradley)**

An act to amend Section 1530a of the Probate Code, relating to compromise of claims by guardians.

CHAPTER 1163**ASSEMBLY BILL 575 (Bradley)**

An act to amend Section 1532 of the Probate Code, relating to sales by guardians.

Amended in Assembly April 3, 1959.

CHAPTER 1257**ASSEMBLY BILL 925 (Bradley)**

An act to amend Section 1557.1 of the Probate Code, relating to the purchase of realty.

CHAPTER 1273

SENATE BILL 159 (Short)

An act to amend Sections 1853 and 1901 of the Probate Code, relating to conservatorship.

This bill was introduced at the request of the Department of Mental Hygiene.

Committee counsel offered the following comments on the measure:

Provides for notice to the Department of Mental Hygiene and copy of the inventory to that department in conservatorship cases where the individual involved is or has been confined in a state hospital.

CHAPTER 347

Q. PUBLIC RESOURCES CODE

SENATE BILL 1266 (Arnold)

An act to amend Section 4012 of the Public Resources Code, relating to the procedure of releasing arrested persons on their promise to appear before a magistrate.

Committee counsel offered the following comments on the bill:

Permits employees of the State Forestry Department to release persons arrested by them for a misdemeanor upon a written promise to appear before a magistrate.

Under present law such release can be made as to any crime but this bill excludes felonies.

CHAPTER 1429

SENATE BILL 620 (Dilworth)

An act to add Section 5008.5 to the Public Resources Code, relating to the Division of Beaches and Parks.

This measure was introduced at the request of the Department of Natural Resources.

Committee counsel offered the following comments on the bill:

Allows officers of the Division of Beaches and Parks to release an arrested person from custody upon a written promise to appear.

CHAPTER 1204

ASSEMBLY BILL 850 (Biddick)

An act to amend and renumber Section 6403 (added by Stats. 1947, Ch. 887) of the Public Resources Code, relating to the powers and duties of the State Lands Commission with respect to the reservation of mineral deposits in state lands.

Committee counsel offered the following comments on the bill:

Amends and renumbers Section 6403, making no substantive change.

CHAPTER 615

R. PUBLIC UTILITIES CODE

ASSEMBLY BILL 1184 (Francis)

An act to amend Sections 21019 and 21408 of the Public Utilities Code, relating to aviation. (Operation of aircraft.)

CHAPTER 2118

SENATE BILL 438 (Teale)

An act to add Sections 21641 and 21642 to the Public Utilities Code, relating to airspace hazards.

Committee counsel offered the following comments on the bill as introduced:

The bill would limit the height of structures which might interfere with the safety of aircraft and the bill proposes two additions to the Public Utilities Code to accomplish this result as follows:

1. No person would be permitted to erect or replace a structure which will result in the structure extending more than 500 feet above the highest point of land within a one-mile radius without a permit from the Public Utilities Commission.

2. The commission shall not issue any permit requested if it determines that the erection or replacement of the structure above the 500 feet set forth would create an unsafe condition for aircraft.

At the request of the author the bill was presented by the California Aeronautical Commission.

The committee discussed the bill in some detail and offered several suggestions for amendment as follows:

On line 19 delete the words "shall not issue" and insert the words "may refuse the issuance of."

On line 15 delete the reference to the highest point of land and insert, in substance a provision that the 500 feet would be measured from the ground level at the structure.

Amended in Senate March 20, 1959.

Amended in Assembly April 15, 1959.

CHAPTER 2091

ASSEMBLY BILL 793 (Biddick)

An act to maintain the Public Utilities Code by amending Sections 22229, 24503, 24531, 24532, 24533, 24534, and 24535 thereof, relating to the organization and powers of districts.

Committee counsel offered the following comments on the bill:

Makes no substantive change and is a *codification to maintain codes.*

CHAPTER 603

S. REVENUE AND TAXATION CODE

ASSEMBLY BILL 794 (Biddick)

An act to maintain the Revenue and Taxation Code by amending Sections 3552.42 and 3730 thereof, by amending and renumbering Article 2.5 (commencing with Section 10111) of Chapter 5, Part 4, Division 2 thereof, and by repealing Chapter 2 (commencing with Section 28201) of Part 12, Division 2 thereof, relating to taxation and the raising of revenue.

Committee counsel offered the following comments on the bill:

Makes no substantive change and is a *codification to maintain codes.*

CHAPTER 604

ASSEMBLY BILL 2164 (Waldie)

An act to amend Sections 13308, 13309, 15111 and 15112 of the Revenue and Taxation Code, relating to adopted children. (Gift and inheritance taxation.)

Amended in Senate June 4, 1959.

CHAPTER 1628

T. STREETS AND HIGHWAYS CODE

ASSEMBLY BILL 795 (Biddick)

An act to maintain the Streets and Highways Code by amending Sections 6611, 27001, 27002, 27003, and 27004 thereof, relating to public ways and all appurtenances thereto.

Committee counsel offered the following comments on the bill:

Makes no substantive change. Is a *codification to maintain codes.*

CHAPTER 605

ASSEMBLY BILL 326 (Reagan)

An act to amend Section 10504 of the Streets and Highways Code, relating to remedies in case of default by contractor.

Committee counsel offered the following comments on the bill:

Amends the procedure for declaration of default by a contractor making municipal improvements.

CHAPTER 892

SENATE BILL 1122 (Coombs)

An act to add Chapter 10.5 (commencing with Section 27190) to Part 3 of Division 16 of, and to amend Section 27182 of, the Streets and Highways Code, relating to bridge and highway districts.

Committee counsel offered the following comments on the bill:

Provides a method of payment of claims against bridge and highway districts in conformity with Assembly Bill 405 (general claims bill) if the same is enacted.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Provisions included in an approved bill.”

U. VEHICLE CODE

ASSEMBLY BILL 796 (Biddick)

An act to maintain the Vehicle Code by amending Sections 142, 694, and 739.1 thereof, and by repealing Section 422.7 thereof, and by amending Sections 35108 and 40513 of the Vehicle Code as proposed by Assembly Bill No. 5, relating to vehicles and vehicular traffic.

Committee counsel offered the following comments on the bill:

Makes no substantive change and is a codification to maintain codes.

CHAPTER 606

SENATE BILL 290 (Grunsky)

An act to amend Section 501 of the Vehicle Code and Section 23101 of the Vehicle Code as proposed by Assembly Bill No. 5, relating to driving vehicles while under the influence of intoxicating liquor.

Amended in Senate March 16, 1959.

Amended in Senate March 18, 1959.

An act to amend Section ~~501~~ of the Vehicle Code and Section 23101 of the Vehicle Code as ~~proposed by Assembly Bill No. 5~~ ENACTED BY THE LEGISLATURE AT THE 1959 REGULAR SESSION, relating to driving vehicles while under the influence of intoxicating liquor.

Committee counsel offered the following comments on the bill as amended:

The March 16 amendments are merely to correct typographical errors and it is to the March 18 amended copy that this memorandum is addressed.

The bill, as amended, provides in substance as follows:

1. Upon a second conviction of driving while drunk causing injury, the defendant must be punished by either

(a) Not less than one nor more than five years in a state prison; or

(b) Not less than 90 days nor more than one year in the county jail, plus a fine of not less than \$500 nor more than \$5,000; or

(c) If the defendant is placed on probation he must, as a condition of probation, be confined in the county jail for at least 15 days and pay a fine of not less than \$500.

2. The present law providing for minimum county jail sentence for first offenses under this section is amended to delete such county jail sentence for first conviction.

3. If a person has previously been convicted under 502 (driving while drunk) such previous conviction of that offense under the bill shall constitute a previous conviction under 501 for the purpose of requiring the mandatory second offense penalties.

The bill, as amended in the Senate on March 18, reflects subcommittee amendments which, as will be noted, reduces the minimum fine on

second offense to \$250 and further makes provision for a statute of limitations on prior offenses as they affect these penalties.

The bill has been further amended to conform to AB 5, passed at this session of the Legislature, so that new numbers are given affected code sections.

Remained in the Assembly Criminal Procedure Committee.

SENATE BILL 291 (Grunsky)

An act to amend Section 502 of the Vehicle Code and Section 23102 of the Vehicle Code as proposed by Assembly Bill No. 5, relating to driving vehicles while under the influence of intoxicating liquor.

Amended in Senate March 18, 1959.

An act to amend Section 502 of the Vehicle Code and Section 23102 of the Vehicle Code as proposed by Assembly Bill No. 5 ENACTED BY THE LEGISLATURE AT THE 1959 REGULAR SESSION, relating to driving vehicles while under the influence of intoxicating liquor.

Committee counsel offered the following comments on the bill as amended:

This is a companion bill to SB 290, and this bill deals with 502 conviction (driving while drunk) whereas the former bill dealt with injuries caused by drunk driving.

The bill as introduced would amend the penalties for driving while drunk as follows:

1. Delete the present minimum county jail sentence on the first conviction;

2. In the event probation is granted on a second offense, the person convicted must nevertheless serve not less than five days in the county jail and pay a fine of not less than \$250, and the court has no discretion to order otherwise.

Under present law no reference is made to probation on either first or second offenses, and under the proposed bill no reference is made limiting probation on a first offense. However, as indicated herein, there is a mandatory jail sentence and fine regardless of probation upon a second offense under this bill.

The bill as amended March 18, 1959, provides the converse of the equivalent amendment to SB 290 involving convictions under 501. In other words, by this bill and also under present law, a previous conviction under 501 is considered a conviction for purposes of second offenses under 502.

The committee amendment again provides a statute of limitations on previous convictions under either section.

The March 18 amendments to the bill further conform the bill to AB 5 and in addition reinsert the words "upon any highway" which were proposed to be deleted by the bill as originally introduced. The committee determined that these offenses should be limited to driving while drunk on the public highways.

Amended in Assembly June 18, 1959.

Amended in conference June 19, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

"Provision is in conflict with another bill on the same subject which was approved."

ASSEMBLY BILL 1301 (Britschgi)

An act to add Section 507 to the Vehicle Code, and to add Section 23118 to the Vehicle Code as proposed by Assembly Bill No. 5, relating to driving a vehicle under the influence of liquors and drugs.

Committee counsel offered the following comments on the bill as introduced:

Provides a penal statute for driving a vehicle under the combined influence of intoxicating liquor and any drug to a degree which renders the driver incapable of safely driving the vehicle.

Amended in Senate May 26, 1959.

An act to add Section 507 to the Vehicle Code, and to add Section 23118 to the Vehicle Code as proposed by Assembly Bill No. 5
AMEND SECTION 23102 OF THE VEHICLE CODE AS EN-
ACTED BY THE LEGISLATURE AT THE 1959 REGULAR
SESSION, relating to driving a vehicle under the influence of
liquors and drugs.

CHAPTER 1282

V. WATER CODE

ASSEMBLY BILL 851 (Biddick)

An act to repeal Section 186 (as amended by Chapter 2424, Statutes of 1957) of the Water Code, relating to State Water Rights Board. (Eliminate duplication of provision.)

CHAPTER 616

ASSEMBLY BILL 774 (Biddick)

An act to codify the Klamath River Basin Compact by adding Part 6 (commencing with Section 5900) to Division 2 of the Water Code, and to repeal Chapter 113 of the Statutes of 1957, and Chapter 2.5 (commencing with Section 8110) of Division 1 of Title 2 of the Government Code, relating to the Klamath River Basin.

Committee counsel offered the following comments on the bill:
Codification to maintain codes. Makes no substantive change.

CHAPTER 586

ASSEMBLY BILL 849 (Biddick)

An act to amend and renumber Section 21661 (as added by Chapter 2154, Statutes of 1957), and the title of Part 6.5 of Division 13 and Sections 36500 to 36509, inclusive (as added by Chapter 1487, Statutes of 1957), of the Water Code, relating to districts.

Committee counsel offered the following comments on the bill:
Codification to maintain codes. Makes no substantive change.

CHAPTER 614

W. WELFARE AND INSTITUTIONS CODE

ASSEMBLY BILL 848 (Biddick)

An act to amend and renumber Section 103.7 (as added by Chapter 1068, Statutes of 1957) of the Welfare and Institutions Code, relating to public assistance recipients.

Committee counsel offered the following comments on the bill:
Codification to maintain codes. Makes no substantive change.

CHAPTER 613

ASSEMBLY BILL 798 (Biddick)

An act to maintain the Welfare and Institutions Code, by amending Sections 156.1, 163, 5400, 6557, 6564, and 6723 thereof, relating to the administration of, and commitment of persons to, the Department of Mental Hygiene.

Committee counsel offered the following comments on the bill:
Codification to maintain codes. Makes no substantive change.

CHAPTER 607

ASSEMBLY BILL 376 (Hanna et al.)

An act to add Section 219 to the Welfare and Institutions Code, relating to real property of public assistance recipients.

Amended in Senate May 27, 1959.

CHAPTER 1617

ASSEMBLY BILL 265 (MacBride and Z'berg)

An act to amend Sections 576 and 578 of, to add Section 575.1 to, and to repeal Sections 577 and 578.1 of, the Welfare and Institutions Code, relating to juvenile court referees.

Amended in Assembly May 8, 1959.

Amended in Senate June 8, 1959.

CHAPTER 1722

ASSEMBLY BILL 2072 (Z'berg)

An act to amend Sections 603 and 604 of the Welfare and Institutions Code, relating to probation committees.

CHAPTER 1018

SENATE BILL 1045 (Dilworth et al.)

An act to amend Section 700 of the Welfare and Institutions Code, relating to the jurisdiction of the juvenile court.

Committee counsel offered the following comments on the measure:
The bill adds to Section 700 of the Welfare and Institutions Code relating to wards of the Juvenile Court an additional ground upon which a minor can be declared a ward of that court.

The additional ground refers to minors who habitually travel across the border into Mexico without being accompanied by parent or guardian. Such activity by the minor creates the presumption that he is in danger of leading an improper life.

No action by Assembly Judiciary Committee—Civil.

SENATE BILL 936 (Murdy)

An act to add Section 703 to the Welfare and Institutions Code, relating to authorization of medical, surgical and dental services to minors.

Amended in Senate April 16, 1959.

An act to add Section 703 to the Welfare and Institutions Code, relating to authorization of medical, surgical, OPTHALMIC, and dental services to minors.

Amended in Senate April 29, 1959.

An act to add Section 703 to the Welfare and Institutions Code, relating to authorization of medical, surgical, ophthalmic, and dental services OR REMEDIAL CARE OR TREATMENT *to minors.*

Amended in Senate May 11, 1959.

An act to add Section 703 to the Welfare and Institutions Code, relating to authorization of medical, or remedial care or treatment to minors. SURGICAL, DENTAL, OR OTHER REMEDIAL CARE FOR MINORS.

Committee counsel offered the following comments on the bill as amended:

Basically, the bill seeks to authorize medical and surgical care for minors who are wards of the juvenile court. Previous discussion centered around the desirability of the following additional provisions:

(1) Notice should be given to the parents if they can be located and if they object or cannot be located then only upon order of the court.

(2) That these services be only provided upon recommendation of an attending physician.

The bill in its present form seems to comply with the requirements set forth.

Amended in Senate May 21, 1959.

CHAPTER 1212

SENATE BILL 1132 (Murdy)

An act to amend Section 720 of the Welfare and Institutions Code, relating to juvenile courts.

Amended in Senate May 25, 1959.

This bill was pocket-vetoed by the Governor for the following stated reason:

“Conflicted with an approved bill.”

SENATE BILL 926 (Farr)

An act to amend Section 728 of the Welfare and Institutions Code, relating to arrest of minors.

Committee counsel offered the following comments on the bill as introduced:

Provides that in juvenile court cases where a petition has been filed the court may order the arrest of a minor if it appears to the court that his behavior may endanger himself or others.

Amended in Senate May 13, 1959.

CHAPTER 1409**ASSEMBLY BILL 1909 (House et al.)**

An act to amend Section 740 of the Welfare and Institutions Code, relating to care of wards of the juvenile court.

Amended in Senate May 29, 1959.

CHAPTER 1047**SENATE BILL 920 (Farr)**

An act to amend Section 740 of the Welfare and Institutions Code, relating to supervision of wards of the juvenile court by probation officers.

Committee counsel offered the following comments on the measure:

This bill permits the visitation and supervision by probation officers of wards of the juvenile court committed to private homes or societies.

The author explained that it has always been assumed that the mere commitment for this care does not terminate the right of supervision by the probation officer and the visitation of the ward in the home; however, some doubt having been cast upon the right, the bill is suggested to clarify the matter.

This bill was pocket-vetoed by the Governor for the following stated reason:

Provisions conflicted with an approved bill."

ASSEMBLY BILL 367 (Kennick et al.)

An act to add Section 752 to the Welfare and Institutions Code, relating to the expunging of juvenile court records.

Amended in Assembly March 11, 1959.

An act to add Section 752 to the Welfare and Institutions Code, relating to the expunging of juvenile court records AND OTHER RECORDS RELATING TO WARDS OF THE JUVENILE COURT.

Amended in Assembly April 16, 1959.

Amended in Senate May 6, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides for a method of expunging of records of the juvenile court in cases where the minor who became a ward of the court has been rehabilitated.

It is provided that either the individual or the county probation officer may file a petition five years or more after the jurisdiction of the

juvenile court has terminated requesting expungement of the records, including all records of arrest.

In the event the court finds that the person is rehabilitated and that he has not been convicted of a felony since the juvenile court jurisdiction terminated all records involving the individual are expunged and it is to be deemed that the proceedings shall never have occurred.

CHAPTER 1723

SENATE BILL 360 (Shaw)

An act to add Section 752 to the Welfare and Institutions Code, relating to disposition of wards of the juvenile court.

Amended in Assembly April 17, 1959.

An act to add Section 752 to the Welfare and Institutions Code AND TO ADD SECTION 227Q TO THE CIVIL CODE, relating to ~~disposition of wards of the juvenile court~~ CUSTODY OF CHILDREN, DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY.

Amended in Assembly May 1, 1959.

An act to add Section ~~752~~ 753 to the Welfare and Institutions Code and to add Section 227q to the Civil Code, relating to custody of children, declaring the urgency thereof, to take effect immediately.

Amended in Assembly May 29, 1959.

An act to add Section 753 to the Welfare and Institutions Code ~~and to add Section 227q to the Civil Code~~, relating to custody of children, declaring the urgency thereof, to take effect immediately.

CHAPTER 2023

SENATE BILL 923 (Farr)

An act to repeal Sections 863, 864, 865, and 866 of, and to add Sections 863, 864, 865, 866, and 866.5 to, and to amend Sections 867 and 868 of, the Welfare and Institutions Code, relating to reimbursement of counties for their cost of care and maintenance of juvenile court wards.

Amended in Senate April 29, 1959.

Committee counsel offered the following comments on the measure as amended:

The bill as introduced seeks to delegate the power now placed in the juvenile court to determine the amount of money parents and other responsible persons should pay toward the cost of care for wards of the juvenile court. The bill generally provides that this power is to be delegated to such officer as may be designated for that purpose by the county board of supervisors, presumably this would be the probation officer in most cases but the bill does not so specify.

The committee generally was opposed to taking this power away from the juvenile court, although it was recognized that in many if not most instances the juvenile court simply followed as a matter of routine the recommendations made by the probation officer. However, the question was raised as to what control, if any, there would be to pre-

vent the probation officer from waiving fees where a fee should be charged or in reverse, how could a parent who feels that he is ordered to pay more than he can afford, have the matter reviewed.

In view of these doubts the subcommittee recommended that the bill be amended to permit the designation of a probation officer in all cases unless the juvenile court ordered otherwise and further allowing the parents access to the juvenile court if the probation officer fixed an excessively high amount to be paid. Other minor technical amendments were made and the bill as now before the committee reflects those amendments.

Amended in Senate May 4, 1959.

Amended in Senate May 11, 1959.

CHAPTER 2145

SENATE BILL 466 (Rodda)

An act to amend Section 868 of the Welfare and Institutions Code, relating to audit of the books and accounts of the probation officer.

CHAPTER 1753

ASSEMBLY BILL 2657 (Meyers et al.)

An act to amend Section 870 of the Welfare and Institutions Code, relating to wards of the juvenile court.

Amended in Assembly June 5, 1959.

CHAPTER 1782

SENATE BILL 1363 (McAteer)

An act to amend Section 870 of the Welfare and Institutions Code, relating to wards of the juvenile court.

Committee counsel offered the following comments on this bill:

The amendment proposed by SB 1363 was identical to AB 2657 as enacted into law. The bill passed both houses of the Legislature without amendment, but was pocket-vetoed by the Governor for the reason that a "similar bill was approved". (AB 2657—Chapter 1782.)

SENATE BILL 925 (Farr)

An act to amend Section 884 of the Welfare and Institutions Code, relating to medical care of persons before the juvenile court.

Committee counsel offered the following comments on the bill:

Amends the section of the Welfare and Institutions Code allowing the juvenile court to order medical or dental care of a child subject to the jurisdiction of that court.

The amendment provides that the court order may also authorize the release of the medical information to probation officers and others.

CHAPTER 1367

ASSEMBLY BILL 799 (Biddick)

An act to maintain the Welfare and Institutions Code by amending Section 2181.1 thereof, relating to aid to aged persons.

Committee counsel offered the following comments on the bill:

Makes no substantive change, and is a *codification to maintain codes.*

CHAPTER 608

SENATE BILL 1044 (Christensen)

An act to amend Section 5050.3 of the Welfare and Institutions Code, relating to emergency commitments of mentally ill persons.

Committee counsel offered the following comments on the bill:

Authorizes county physician or assistant county physician in addition to peace officers to apply for emergency commitments of mentally ill persons.

CHAPTER 1414

SENATE BILL 1104 (Slattery)

An act to add Section 5259.5 to the Welfare and Institutions Code, relating to the commitment of feeble-minded persons.

Amended in the Senate May 13, 1959.

Committee counsel offered the following comments on the bill as amended:

Provides for the execution of orders of commitment by the sheriff or probation officer as designated by the court, of feeble-minded persons.

CHAPTER 1416

ASSEMBLY BILL 2228 (Belotti)

An act to amend Section 7059 of the Welfare and Institutions Code, relating to defective or psychopathic delinquents.

CHAPTER 1022

X. MISCELLANEOUS STATUTES

SENATE BILL 593 (McAteer)

An act to authorize the bringing of a suit against the State of California to quiet title to land sold as salt marsh or tidelands by the State of California, declaring the urgency thereof, to take effect immediately. (Special San Francisco problem.)

CHAPTER 397

SENATE BILL 891 (Hollister)

An act to add Section 11.5 to the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057, Statutes of 1955), relating to the Santa Barbara Flood Control and Water Conservation District, declaring the urgency thereof, to take effect immediately.

Committee counsel offered the following comments on this bill as introduced:

This is an urgency measure applying only to the Santa Barbara Flood Control District. Proponents stated that the bill is necessary as an urgency matter to reduce the number of public hearings required and avoid duplication of such hearings in the interest of time.

Amended in Senate May 4, 1959.

CHAPTER 881

ASSEMBLY BILL 801 (Biddick)

An act to amend Section 14 of the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405 of the Statutes of 1951), relating to flood control and water conservation in Santa Clara County.

Committee counsel offered the following comments on the bill:

Makes no substantive change, and is a codification to maintain codes.

CHAPTER 609

ASSEMBLY BILL 749 (Hanna)

An act making an appropriation to the State Department of Social Welfare for home studies in connection with the adoption of foreign-born children.

Amended in Assembly April 17, 1959.

Amended in Assembly June 5, 1959.

An act making an appropriation to the State Department of Social Welfare PROVIDING for home studies in connection with the adoption of foreign-born children, AND MAKING AN APPROPRIATION THEREFOR.

Amended in Senate June 17, 1959.

CHAPTER 2050

ASSEMBLY BILL 2665 (Belotti)

An act authorizing a suit or suits against the State of California to quiet title against it to certain real property in the County of Del Norte, State of California.

Amended in Assembly June 5, 1959.

Amended in Senate June 18, 1959.

CHAPTER 1991**ASSEMBLY BILL 410 (Bradley)**

An act to amend Section 3 of Chapter 349 of the Statutes of 1873-74, Section 9 of Chapter 201 of the Statutes of 1895, Section 11 of Chapter 310 of the Statutes of 1905, Section 19 of the Storm Water District Act of 1909 (Chapter 222, Statutes of 1909), Section 53 of the Solvang Municipal Improvement District Act (Chapter 1635, Statutes of 1951), Section 53 of the Fairfield-Suisun Sewer District Act (Chapter 303, Statutes of 1951), Section 53 of the Montalvo Municipal Improvement District Act (Chapter 549, Statutes of 1955), and Section 11 of the Lower San Joaquin Levee District Act (Chapter 1075, Statutes of 1955); to add Section 3.1 to Chapter 349 of the Statutes of 1873-74, Section 9.5 to Chapter 63 of the Statutes of 1880, Section 12.5 to Chapter 158 of the Statutes of 1885, Section 49.5 to the Drainage Act of 1903 (Chapter 238, Statutes of 1903), Section 46.5 to Chapter 25 of the Statutes of 1907, Section 19.1 to the Storm Water District Act of 1909 (Chapter 222, Statutes of 1909), Section 8.5 to Chapter 99 of the Statutes of 1913, Section 8.5 to Chapter 361 of the Statutes of 1915, Section 29.5 to the Palo Verde Irrigation District Act (Chapter 452, Statutes of 1923), Section 34.5 to the Water Conservation Act of 1927 (Chapter 91, Statutes of 1927), Section 3.1 to the Orange County Flood Control District Act (Chapter 723, Statutes of 1927), Section 20.5 to the American River Flood Control District Act (Chapter 808, Statutes of 1927), Section 10.5 to Chapter 641 of the Statutes of 1931, Section 21.1 to the Water Conservation Act of 1931 (Chapter 1020, Statutes of 1931), Section 20.5 to the Orange County Water District Act (Chapter 924, Statutes of 1933), Section 8 is added to the San Bernardino County Flood Control Act (Chapter 73, Statutes of 1939), Section 15.1 is added to the Monterey Peninsula Airport District Act (Chapter 52, Statutes of 1941), Section 135.5 to the California Water Storage and Conservation District Act (Chapter 1253, Statutes of 1941), Section 15.5 to the County Water Authority Act (Chapter 545, Statutes of 1943), Section 17.5 to the San Diego County Flood Control District Act (Chapter 1372, Statutes of 1945), Section 2.5 to the Vallejo Sanitation and Flood Control District Act (Chapter 17, Statutes of the First Extraordinary Session of 1952), Section 9.5 to the Contra Costa County Storm Drainage District Act (Chapter 1532, Statutes of 1953), Section 11.5 to the Fresno Metropolitan Flood Control Act (Chapter 503, Statutes of 1955), and Section 48 to the Santa Clara-Alameda-San Benito Water Authority Act (Chapter 1289, Statutes of 1955); and to repeal and add Section 20 of the Municipal Water District Act of 1911 (Chapter 671, Statutes of 1911), Section 14½ of the Los Angeles County Flood Control Act (Chapter 755, Statutes

of 1915), Section 6.1 of the Metropolitan Water District Act (Chapter 429, Statutes of 1927), Section 13 of the Ventura County Flood Control Act (Chapter 44, Statutes of the Fourth Extraordinary Session of 1944), Section 31 of the Humboldt County Flood Control District Act (Chapter 939, Statutes of 1945), Section 15 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122, Statutes of 1945), Section 8.1 of the Santa Barbara County Water Agency Act (Chapter 1501, Statutes of 1945), Section 30 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294, Statutes of 1945), Section 30 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699, Statutes of 1947), Section 8 of the Sonoma County Flood Control and Water Conservation District Act (Chapter 994, Statutes of 1949), Section 8 of the Mendocino Flood Control and Water Conservation District Act (Chapter 995, Statutes of 1949), Section 29 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275, Statutes of 1949), Section 30 of the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405, Statutes of 1951), Section 30 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449, Statutes of 1951), Section 34 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544, Statutes of 1951), Section 30 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617, Statutes of 1951), Section 15 of the Kings River Conservation District Act (Chapter 931, Statutes of 1951), Section 8.1 of the Solano County Flood Control and Water Conservation District Act (Chapter 1656, Statutes of 1951), Section 8 of the Yolo County Flood Control and Water Conservation District Act (Chapter 1657, Statutes of 1951), Section 8.1 of the Sacramento County Water Agency Act (Chapter 10, Statutes of the First Extraordinary Session of 1952), Section 29 of the Marin County Flood Control and Water Conservation District Act (Chapter 666, Statutes of 1953), Section 34 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598, Statutes of 1953), Section 8 of the Morrison Creek Flood Control District Act (Chapter 1771, Statutes of 1953), Section 31 of the Del Norte County Flood Control District Act (Chapter 166, Statutes of 1955), Section 31 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057, Statutes of 1955), Section 154 of the Santa Cruz County Flood Control and Water Conservation District Act (Chapter 1489, Statutes of 1955), and Section 20 of the Contra Costa County Water Agency Act (Chapter 518, Statutes of 1957), relating to claims against the State, local public entities and public officers and employees.

Amended in Assembly March 24, 1959.

An act to amend Section 3 of Chapter 349 of the Statutes of 1873-74, Section 9 of Chapter 201 of the Statutes of 1895, Section 11 of Chapter 310 of the Statutes of 1905, Section 19 of the Storm Water District Act of 1909 (Chapter 222, Statutes of 1909), Section 53 of the Solvang Municipal Improvement District Act (Chapter 1635, Statutes

of 1951), Section 53 of the *Fairfield-Suisun Sewer District Act* (Chapter 303, Statutes of 1951), Section 53 of the *Montalvo Municipal Improvement District Act* (Chapter 549, Statutes of 1955), and Section 11 of the *Lower San Joaquin Levee District Act* (Chapter 1075, Statutes of 1955); to add Section 3.1 to Chapter 349 of the Statutes of 1873-74, Section 9.5 to Chapter 63 of the Statutes of 1880, Section 12.5 to Chapter 158 of the Statutes of 1885, Section 49.5 to the *Drainage Act* of 1903 (Chapter 238, Statutes of 1903), Section 46.5 to Chapter 25 of the Statutes of 1907, Section 19.1 to the *Storm Water District Act* of 1909 (Chapter 222, Statutes of 1909), Section 8.5 to Chapter 99 of the Statutes of 1913, Section 8.5 to Chapter 361 of the Statutes of 1915, Section 29.5 to the *Palo Verde Irrigation District Act* (Chapter 452, Statutes of 1923), Section 34.5 to the *Water Conservation Act* of 1927 (Chapter 91, Statutes of 1927), Section 3.1 to the *Orange County Flood Control District Act* (Chapter 723, Statutes of 1927), Section 20.5 to the *American River Flood Control District Act* (Chapter 808, Statutes of 1927), Section 10.5 to Chapter 641 of the Statutes of 1931, Section 21.1 to the *Water Conservation Act* of 1931 (Chapter 1020, Statutes of 1931), Section 20.5 to the *Orange County Water District Act* (Chapter 924, Statutes of 1933), Section 8 is added to the *San Bernardino County Flood Control Act* (Chapter 73, Statutes of 1939), Section 15.1 is added to the *Monterey Peninsula Airport District Act* (Chapter 52, Statutes of 1941), Section 135.5 to the *California Water Storage and Conservation District Act* (Chapter 1253, Statutes of 1941), Section 15.5 to the *County Water Authority Act* (Chapter 545, Statutes of 1943), Section 17.5 to the *San Diego County Flood Control District Act* (Chapter 1372, Statutes of 1945), Section 2.5 to the *Vallejo Sanitation and Flood Control District Act* (Chapter 17, Statutes of the First Extraordinary Session of 1952), Section 9.5 to the *Contra Costa County Storm Drainage District Act* (Chapter 1532, Statutes of 1953), Section 11.5 to the *Fresno Metropolitan Flood Control Act* (Chapter 503, Statutes of 1955), and Section 48 to the *Santa Clara-Alameda-San Benito Water Authority Act* (Chapter 1289, Statutes of 1955); and to repeal and add Section 20 of the *Municipal Water District Act* of 1911 (Chapter 671, Statutes of 1911), Section 14½ of the *Los Angeles County Flood Control Act* (Chapter 755, Statutes of 1915), Section 6.1 of the *Metropolitan Water District Act* (Chapter 429, Statutes of 1927), Section 13 of the *Ventura County Flood Control Act* (Chapter 44, Statutes of the Fourth Extraordinary Session of 1944), Section 31 of the *Humboldt County Flood Control District Act* (Chapter 939, Statutes of 1945), Section 15 of the *Riverside County Flood Control and Water Conservation District Act* (Chapter 1122, Statutes of 1945), Section 8.1 of the *Santa Barbara County Water Agency Act* (Chapter 1501, Statutes of 1945), Section 30 of the *San Luis Obispo County Flood Control and Water Conservation District Act* (Chapter 1294, Statutes of 1945), Section 30 of the *Monterey County Flood Control and Water Conservation District Act* (Chapter 699, Statutes of 1947), Section 8 of the *Sonoma County Flood Control and Water Conservation District Act* (Chapter 994, Statutes of 1949), Section 8 of the *Mendocino Flood Control and Water Conservation District Act* (Chapter 995, Statutes of

1949), Section 29 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275, Statutes of 1949), Section 30 of the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405, Statutes of 1951), Section 30 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449, Statutes of 1951), Section 34 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544, Statutes of 1951), Section 30 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617, Statutes of 1951), Section 15 of the Kings River Conservation District Act (Chapter 931, Statutes of 1951), Section 8.1 of the Solano County Flood Control and Water Conservation District Act (Chapter 1656, Statutes of 1951), Section 8 of the Yolo County Flood Control and Water Conservation District Act (Chapter 1657, Statutes of 1951), Section 8.1 of the Sacramento County Water Agency Act (Chapter 10, Statutes of the First Extraordinary Session of 1952), Section 29 of the Marin County Flood Control and Water Conservation District Act (Chapter 666, Statutes of 1953), Section 34 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598, Statutes of 1953), Section 8 of the Morrison Creek Flood Control District Act (Chapter 1771, Statutes of 1953), Section 31 of the Del Norte County Flood Control District Act (Chapter 166, Statutes of 1955), Section 31 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057, Statutes of 1955), Section 154 of the Santa Cruz County Flood Control and Water Conservation District Act (Chapter 1489, Statutes of 1955) ~~and~~ Section 20 of the Contra Costa County Water Agency Act (Chapter 518, Statutes of 1957) AND SECTION 4.23 OF THE LOS ANGELES METROPOLITAN TRANSIT AUTHORITY ACT OF 1957 (CHAPTER 547, STATUTES OF 1957), relating to claims against the State, local public entities and public officers and employees.

Committee counsel offered the following comments on the bill as amended in the Assembly, March 24, 1959.

Claims against districts.—(Chapter 1728). This is one of the series of claims bills sponsored by the California Law Revision Commission. (See AB 405—Gov. C.—Chapter 1724, page 533 of this report.)

CHAPTER 1728

Y. CONSTITUTION

ASSEMBLY CONSTITUTIONAL AMENDMENT 5 (Elliott et al.)

Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 1 of Article II thereof, relating to the right to vote.

Amended in Assembly February 20, 1959.

Committee counsel offered the following comments on the amendment:

The author explained the purpose of the bill as providing for the restoration of the right to vote for felons who had completed their sentence.

The discussion of the committee primarily revolved around the definition of the crimes involved. The original bill deleted reference to convictions for infamous crimes and inserted instead the word "felony." The first amended bill restored the term "infamous crime" and deleted the word "felony." The third amended bill simply added the word "treason" to those cases where the restoration of the right to vote shall not be allowed.

Amended in Senate February 26, 1959.

Amended in Senate April 28, 1959.

Assembly Constitutional Amendment No. 5—A resolution to ~~propose~~ PROPOSE to the people of the State of California an amendment to the Constitution of the State, by amending Section 1 of Article II thereof, relating to the right to vote.

CHAPTER 158

SENATE CONSTITUTIONAL AMENDMENT 11 (Regan et al.)

Senate Constitutional Amendment No. 11—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 4e to Article VI thereof, relating to the appellate jurisdiction of the district courts of appeal.

The following explanation was presented by the Legislative Representative of the State Bar Association:

This proposal is being recommended by the Judicial Council. It has been approved by the State Bar. Under existing law, appeals from the municipal and justice courts are determined by the superior court, and there is no further appeal to the district courts of appeal or to the State Supreme Court. This sometimes results in conflicting decisions on important questions of law in different counties of the State. If a federal question is involved, an appeal can be taken directly from the Superior Court to the United States Supreme Court; in most of such instances the cases could and should be settled at a state level.

The proposed amendment provides that the district courts of appeal shall have appellate jurisdiction on appeal in all cases arising

out of municipal and justice courts to the extent and in the manner prescribed by rules of the Judicial Council.

Amended in Senate May 12, 1959.

CHAPTER 215

SENATE CONSTITUTIONAL AMENDMENT 14 (Regan et al.)

Senate Constitutional Amendment No. 14—A resolution to propose to the people of the State of California an amendment to the Constitution of said State by amending Sections 1a and 8 of, and by adding Sections 1b, 1c, and 10b to, Article VI of said Constitution, relating to the administration of justice, including the manner of appointment, retirement, and removal of judges and the composition and duties of the Commission on Judicial Qualifications, Judicial Council, and State Bar.

Amended in Senate April 7, 1959.

The following explanation was presented by the Legislative Representative of the State Bar Association:

The proposed amendment makes a number of important changes in the judicial system. The present Commission on Qualifications would be superseded by a new Commission on Judicial Qualifications consisting of 11 members instead of the present three members. The membership would be composed of the Chief Justice, the Attorney General, two justices of the district courts of appeal, two judges of the superior court and one judge of a municipal court, two members of the State Bar appointed by the Board of Governors and two citizens, neither lawyers nor judges, appointed by the Governor. The new commission's powers would be increased in two respects: (1) It could recommend to the Supreme Court the removal of a judge for willful misconduct in office or willful and persistent failure to perform his duties. It could also recommend that a judge be forced to retire for disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character; (2) The Governor's appointments to the superior and municipal courts would be made subject to confirmation by the commission as is presently the case with respect to justices of the Supreme Court and district courts of appeal.

The membership of the Judicial Council would be augmented so that it would consist of the Chief Justice, an Associate Justice of the Supreme Court, three justices of district courts of appeal, four judges of superior courts, two judges of municipal courts and one judge of a justice court. In addition, there would be two members of the Legislature on the Judicial Council, one from each house, and four members of the State Bar appointed by the Board of Governors. The council would be granted authority to appoint an administrative director of the courts, who would perform such duties as the council and its chairman, other than rule making, as might be delegated to him. The Legislature would be empowered to authorize the Judicial Council to promulgate rules of practice and procedure for all of the courts. These rules would supersede laws on the same subject except as to any statute enacted subsequently which specifically provides that it supersedes rules promulgated in conformity with this provision.

Finally, because the State Bar would be given the duty of appointing some of the members of two constitutional bodies, the Judicial Council and the Commission on Judicial Qualifications, the State Bar too would be made a constitutional organization.

This proposal has the active support of the State Bar, the Judicial Council and the Conference of California Judges.

Amended in Senate April 27, 1959.

Senate Constitutional Amendment No. 14—A resolution to propose to the people of the State of California an amendment to the Constitution of said State by amending Sections ~~1a and 8~~ SECTION 1A of, and by adding Sections 1b, 1c, and ~~10b~~ 10B, AND 26A to, Article VI of said Constitution, relating to the administration of justice, including the manner of appointment, retirement, and removal of judges and the composition and duties of the Commission on Judicial Qualifications, Judicial Council, and State Bar.

Amended in Senate May 12, 1959.

Senate Constitutional Amendment No. 14—A resolution to propose to the people of the State of California an amendment to the Constitution of said State by amending Section 1a of, and by adding Sections 1b, 1c, 10b, and 26a to, Article VI of said Constitution, relating to the administration of justice, including the manner of appointment, retirement, and removal of judges and the composition and duties of the Commission on Judicial Qualifications, Judicial Council, and State Bar. REMOVAL AND RETIREMENT OF JUDGES, THE MEMBERSHIP AND DUTIES OF THE COMMISSION ON JUDICIAL QUALIFICATIONS, JUDICIAL COUNCIL AND STATE BAR, AND THE RENAMING OF THE COMMISSION ON QUALIFICATIONS.

Amended in Assembly June 4, 1959.

CHAPTER 254

ASSEMBLY CONSTITUTIONAL AMENDMENT 16 (Bradley)

Assembly Constitutional Amendment No. 16—A resolution to propose to the people of the State of California an amendment to the Constitution of the State by adding Section 10 to Article XI thereof, relating to the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof. (Part of the recommendations of the California Law Revision Commission. See AB 405.)

Amended in Assembly April 8, 1959.

CHAPTER 231

Z. RESOLUTIONS

SENATE CONCURRENT RESOLUTION 20 (Farr)

Senate Concurrent Resolution No. 20—Relative to a study of the Uniform Commercial Code.

Committee counsel offered the following comments on the resolution:
Provides for an interim study of the Uniform Commercial Code by either a Joint Judiciary Committee or if none is created by the Judiciary Committee of each house.

Resolution remained in Assembly Rules Committee.

SENATE CONCURRENT RESOLUTION 32 (Regan)

Senate Concurrent Resolution No. 32—Relative to a study to be made of problems arising from automobile accident litigation.

Committee counsel offered the following comments on the resolution as introduced:

Resolution referring to a joint judiciary committee, or if none is created, to separate house judiciary committees, the question as to desirability of establishing an Automobile Accident Commission.

Amended in Assembly June 5, 1959.

CHAPTER 206

ASSEMBLY CONCURRENT RESOLUTION 36 (Bradley)

Assembly Concurrent Resolution No. 36—Relative to approving continuation of studies by the California Law Revision Commission.

CHAPTER 98

ASSEMBLY CONCURRENT RESOLUTION 66 (Kilpatrick)

Assembly Concurrent Resolution No. 66—Relative to criminal procedure in time of disaster.

Amended in Assembly February 19, 1959.

Amended in Assembly March 4, 1959.

Committee counsel offered the following comments on the resolution as amended:

Directs the Judicial Council to survey the need for legislation for a system of criminal procedure during times of disaster from enemy attack.

CHAPTER 187

ASSEMBLY JOINT RESOLUTION 36 (Hanna et al.)

Assembly Joint Resolution No. 36—Relative to adoption of foreign-born children.

CHAPTER 230

ASSEMBLY JOINT RESOLUTION 41 (Miller)

Assembly Joint Resolution No. 41—Relative to unclaimed funds and property held by Federal Government.

CHAPTER 234

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CALIFORNIA STATE LEGISLATURE
JOINT INTERIM COMMITTEE ON
LEGISLATIVE ORGANIZATION

**REDUCTION OF LEGISLATIVE
PRINTING COSTS**

SUBCOMMITTEE MEMBERS:

Assemblyman Augustus F. Hawkins, *Chairman*

Assemblyman Eugene G. Nisbet

Senator John F. McCarthy

Senator Virgil O'Sullivan

D. L. CONNELLY, *Consultant*

CALIFORNIA STATE LEGISLATURE
SACRAMENTO
February, 1960

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LETTER OF TRANSMITTAL FROM SUBCOMMITTEE ON LEGISLATIVE PRINTING

CALIFORNIA LEGISLATURE
SACRAMENTO, CALIFORNIA, February, 1960

THE HONORABLE RICHARD T. HANNA

*Chairman, Joint Committee on Legislative Organization
State Capitol, Sacramento 14, California*

DEAR ASSEMBLYMAN HANNA: The Subcommittee on Legislative Printing herewith submits to the Joint Committee on Legislative Organization a preliminary report on its activities:

Time has prevented us in the few months since our creation from undertaking numerous studies involved in the scope of such a problem, so we have necessarily confined our activities to the less controversial procedural areas.

As of this time, the subcommittee awaits further instructions as to continuation of its existence beyond the filing of this report.

The subcommittee wishes to acknowledge and express its appreciation to the many witnesses co-operating in the study; and to the excellent and time-consuming efforts of its consultant, D. L. Connelly, and of John E. Caswell, from the Office of the Legislative Analyst.

Respectfully submitted,

AUGUSTUS F. HAWKINS, Chairman

ASSEMBLYMAN EUGENE G. NISBET
SENATOR JOHN F. MCCARTHY
SENATOR VIRGIL O'SULLIVAN

ASSEMBLY CONCURRENT RESOLUTION NO. 141

CHAPTER 219

Assembly Concurrent Resolution No. 141—Relative to
economy in legislative printing.

(Filed with Secretary of State, June 17, 1959)

WHEREAS, It is the desire of the Legislature to economize wherever practicable in the costs of its operation and to improve on its procedure; and

WHEREAS, Printing costs constitute a major item in the expenditures of the Legislature, representing approximately 21 percent of the total expenditures in the Fiscal Year 1957-1958; and

WHEREAS, New methods of reproducing legislative bills and other legislative items have been proposed and are being tried in other states, including the State of Washington, which indicate possible reductions in time and printing costs; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Joint Committee on Legislative Organization is hereby directed to study, investigate and report to the Legislature not later than the fifth calendar day of the 1960 Regular Session upon the subject of this resolution, and to include in its report any recommendations it may have designed to bring about greater economy in legislative printing.

PERSONS PARTICIPATING IN THE SUBCOMMITTEE HEARINGS

| | |
|----------------------|---|
| Caswell, John E. | Office of the Legislative Analyst |
| Donoghue, Eleanor K. | Assembly Minute Clerk |
| Driscoll, James | Assistant to Chief Clerk of the Assembly |
| Gallagher, Paul E. | State Printer |
| Guffin, Ernest E. | Office of the Legislative Analyst |
| Hanna, Richard T. | Chairman, Joint Committee on Legislative Organization |
| Hubbs, Jack | American Type Founders |
| Kleps, Ralph N. | Legislative Counsel |
| Knapp, Albert N. | Supervisor of the Legislative Bill Room |
| Knapp, William | State Printing Plant |
| Ohnimus, Arthur A. | Chief Clerk, Assembly |
| Saylor, John B. | Consultant to Assembly Rules Committee |
| Titus, Ralph | Assistant State Printer |

Sue Newman, *Secretary*

CHAPTER I

INTRODUCTION

Annual legislative printing bills of over a million dollars led the 1959 Legislature to instruct the Joint Committee on Legislative Organization to study means of reducing printing costs. In six years, 1954-1959, \$4.9 millions was spent for legislative printing, 21.4 percent of the total cost of the Legislature. The legislative printing bill reached a peak of \$1,527,932 in 1957. The bill for the 1959 general session had reached \$1,481,878 through November, with six reports unpublished and the journals of both houses unbound.

A Subcommittee on Legislative Printing was appointed pursuant to Assembly Concurrent Resolution 141. The subcommittee members consisted of Assemblyman Augustus F. Hawkins, Chairman, Assemblyman Eugene G. Nisbet, Senator John F. McCarthy, and Senator Virgil O'Sullivan. D. L. Connelly was retained as consultant. Mr. Connelly has operated his own printing plant, has been employed at the State Printing Office, and has served the Assembly in various capacities, including that of engrossing clerk. The Legislative Analyst furnished the services of John E. Caswell.

The subcommittee to date has found that savings of more than \$100,000 per general session could be realized without curtailment of necessary and useful services. Materials have been reprinted in various publications and carried through many editions simply on the basis of precedent. For example, 185 complete sets of bills and amendments have been filed in binders daily, although less than 40 sets have been called for. The estimated cost of unnecessary labor in sorting and filing these bills during and after the 1959 Session approaches \$20,000.

Better editing of committee reports has been recommended in order to make them more informative and more readily digested by the Members of the Legislature, as well as to control cost. Reports that are too voluminous for members to study defeat their own purpose.

It has been recommended that authority to designate the number of copies to be printed be given to each Rules Committee, along with the power to order reprints at a member's request, thus eliminating the present Assembly requirement of a resolution to reprint. Reports submitted at the 1959 Session make a stack two feet thick, cover approximately 10,000 pages, and cost more than \$125,000 to print. Estimated potential savings may reach \$25,000.

Additional savings are possible at the will of the Legislature through reducing overtime at the Printing Plant by rescheduling the daily sessions. The State Printer has estimated that as much as \$70,000 might be saved in addition to sums mentioned above.

Realization of maximum savings requires: Closer liaison between the legislative staff and the Printing Office; review of reports to see that they conform to official style and rules regarding contents; and co-ordinated scheduling of legislative printing to assure timely delivery of

priority items. It is recommended that a printing co-ordinator be appointed to serve as an attache of the Joint Committee on Legislative Organization. Savings estimates shown are above and beyond his salary.

By adoption of the committee's recommendations, the Legislature may make savings approaching \$100,000. Contingent and potential savings for each general session may bring the total to over \$200,000, based on 1959 costs. Additional savings may be expected in alternate years when budget and special sessions are held.

Savings in Members' and attaches' time, and clarity in presenting information, are deemed by the subcommittee to be even more important than cash savings.

The following table presents the principal sources of possible savings in legislative printing identified so far.

**ESTIMATED SAVINGS IN LEGISLATIVE PRINTING POSSIBLE
DURING A GENERAL SESSION**

| | <i>Savings</i> |
|--|------------------|
| <i>Eliminate duplication and extraneous matter</i> ----- | \$106,600 |
| Legislative Journals, drop "corrected copy" ----- | \$4,400 |
| Daily and Weekly Histories, reduce miscellaneous matter ----- | 57,600 |
| Congratulatory and memorial resolutions, standardize presentation copies ----- | 10,000 |
| Resolutions, eliminate reprinting in Journal of unamended resolutions on third reading ----- | 3,000 |
| Legislative Handbook, print rules separately, eliminate thumb cuts on 2400 copies ----- | 4,500 |
| Legislative Advocates, print directory only ----- | 7,000 |
| Complete bill sets, reduce number maintained ----- | 20,000 |
| <i>Authorize Rules Committees to establish standards for contents of committee reports and size of printings</i> ----- | 25,000 |
| <i>Reduce Printing Plant overtime by revising legislative schedules: up to</i> -- | 70,000 |
| TOTAL POTENTIAL SAVINGS ----- | \$201,600 |

CHAPTER II

LEGISLATIVE JOURNALS

Findings: The Journal of each house at present goes through three printed stages. The first stage is the familiar form, available on the succeeding legislative day, and printed on newspaper stock.

The second stage is the "corrected Journal," and embodies all corrections made to the minutes, including elimination of materials officially expunged from the Journal. After the corrections have been set in type, signature lines are added on the last page. The type is put back on the presses, and a run of 25 copies is made on bond paper, one of which becomes the official copy for the Archives.

The signature lines are now removed from the forms. Pages from the following day's corrected Journal are added to fill out the folio sheet, and a sufficient number of copies is printed on book paper to supply the bound volumes of the Journal.

The State Printer has suggested that the "corrected Journal" on bond paper be eliminated and additional copies run on book paper. As each day's Journal begins at the top of an odd-numbered page, it would be simple to file each day's official copy separately. A standard jacket would be printed on which to place the official signature.

Copies of the Journals printed a hundred years ago, as well as copies printed shortly after the introduction of modern book papers, have been examined. There is no evidence of rapid deterioration.

Recommendation: Eliminate "corrected copy" of Journal on bond paper. Develop a "certification jacket" to bear certifying signatures on official copies.

ESTIMATED SAVINGS—\$4,400

CHAPTER III

DAILY AND WEEKLY HISTORIES

The function of a bill history is to record the stages through which it has passed. The daily history lists only the bills on which action has been taken as of that day, but furnishes a complete history of each bill. The weekly history furnishes a complete history of all bills. Thus the status of any bill can be checked by consulting the most recent weekly history and all succeeding daily histories (never more than four).

Over the years a variety of information has been incorporated in the front of the histories, much of which is available in the Legislative Handbook and elsewhere. It constitutes approximately one-third of the entire bulk of the histories. This material may be divided into three classes, according to use.

General Information: The following list illustrates the variety of material contained. It is taken from the Assembly Weekly History for June 19, 1959. It consumed 44 pages.

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If one removes all the general information sections but the Assembly or Senate order of business and the officers of the Assembly or Senate, the annual savings during a general session will be approximately as shown in the following table. Savings in alternate years will depend on the actual number of legislative days. Daily cost per page is estimated at \$3 as the type can be left standing with only minor changes.

In place of the general information section, it is proposed to issue a Supplement to the History containing such of this material as the Rules Committee determine to be needed. This Supplement can be revised as often as needed. If we estimate a total of 64 pages with separate covers for each house, the approximate cost will be \$2,000 (\$13 a page), including a legislative telephone directory.

**SAVINGS POSSIBLE BY REPLACING GENERAL INFORMATION
SECTION WITH A SEPARATE PUBLICATION**

| <i>Histories</i> | <i>Days Run</i> | <i>Pages</i> | <i>Savings at \$3 per page</i> |
|--|-----------------|--------------|------------------------------------|
| Assembly Daily ----- | 96 | 0* | 00 |
| Assembly Weekly ----- | 24 | 42 | \$3,024 |
| Senate Daily ----- | 96 | 21 | 6,048 |
| Senate Weekly ----- | 24 | 21 | 1,512 |
| Total Gross Savings----- | | | \$10,580 |
| Less Cost of Supplement----- | | | 2,000 |
| NET SAVINGS ON GENERAL INFORMATION SECTIONS ----- | | | \$8,580 |

* Dropped after April 16, 1959.

Tables of Bills With Personal References: Following the general information section are analytical tables of bills by name of author. The most comprehensive Assembly table is entitled "Recapitulation of Assembly Measures, Their Authors, and Committees Referred To." The Senate title is similar.

Unlike the general information section, these tables increase in length throughout the session. At the end of the first four weeks, the "Recapitulation" took up 28 pages in the Assembly Weekly History; "personal reference" tables totaled 46 pages. By the end of the session, the Recapitulation took up 52 pages; "personal reference" tables totaled 96 pages.

This section is largely billed at premium composition rates and must be revised daily. A conservative cost estimate is \$18 per page for each issue.

The following table shows the estimated savings if all "personal reference" tables are eliminated but the "Recapitulation."

**SAVINGS POSSIBLE THROUGH RETAINING THE SINGLE COMPLETE
RECAPITULATION OF AUTHORS AND THEIR MEASURES**

| <i>History</i> | <i>Days Run</i> | <i>Pages Average</i> | <i>Savings at \$18 per page</i> |
|--------------------------------|-----------------|--------------------------|-------------------------------------|
| Senate Weekly ----- | 24 | 33 | \$14,265 |
| Assembly Weekly ----- | 24 | 32 | 13,824 |
| ESTIMATED SAVINGS ----- | | | \$28,080 |

Further economies can be achieved by simplifying any "personal reference" tables which are retained. This has already been achieved in the Senate by: (1) showing bills only under committees where they are currently assigned; (2) eliminating asterisks and daggers, which indicate that a bill has been re-referred *out* of committee, or *to* the present committee. Both Assembly and Senate can save by (3) eliminating unnecessary repetitions of such designations as ACA and SCR.

Simplification of the "Recapitulation of Assembly Measures, Their Authors, and Committees Referred To," should reduce the cost by about one-third. Calculated as before, this amounts to over \$6,336.

Adding \$28,080 and \$6,336, the total estimated saving achievable under the complete recommendation on "personal reference" tables amounts to over \$34,400.

As an alternative, simplification of all Assembly "personal reference" tables is estimated to save approximately \$10,600. This saving has already been achieved in the Senate Histories.

Progress Tables: This group of tables lists bills according to the stage they have reached in the legislative process. Each table lists the bills or resolutions by number, and gives the total so treated. The Assembly has continued to publish these tables daily and weekly, while the Senate publishes them only in the weekly issue. Examples of these tables are:

**ASSEMBLY CONSTITUTIONAL AMENDMENTS ADOPTED IN
ASSEMBLY, AND TO SENATE**

| | | | | | | | |
|---------|----|-----|-----|-----|-----|-----|-----|
| 4, | 5, | 15, | 16, | 18, | 21, | 26, | 33. |
| Total—8 | | | | | | | |

**ASSEMBLY JOINT RESOLUTIONS TAKEN UP WITHOUT REFERENCE
TO COMMITTEE IN ASSEMBLY**

28. (Total—1)

Your subcommittee recognizes the fact that occasions have doubtless arisen when each one of these tables has proved useful to some member. Each one of them, however, duplicates information available in the individual bill histories. The cost can only be justified by general agreement that a specific table or group of tables is used repeatedly by a substantial number of the members. By dropping all but those that appear to have a high reference value, the members have an opportunity to determine which ones they genuinely miss on repeated occasions.

The following tables are recommended for retention in the Weekly Histories:

Senate (Assembly) Bills approved by the Governor, chaptered and filed with the Secretary of State.

Chaptered numbers of Assembly and Senate Bills approved by the Governor.

Assembly (Senate) Constitutional Amendments chaptered and filed with the Secretary of State.

Senate (Assembly) Concurrent Resolutions chaptered and filed with the Secretary of State.

Assembly (Senate) Joint Resolutions chaptered and filed with the Secretary of State.

Chapter numbers of Assembly and Senate Resolutions filed with the Secretary of State.

Number of Senate (Assembly) Bills, Constitutional Amendments, Concurrent and Joint Resolutions introduced daily.

Four of the above tables supply the "Subject of Title" in full. Replacing the long title of a bill by a short title can materially reduce the cost of these tables while making them easier to use.

**SAVINGS POSSIBLE BY REDUCING THE NUMBER AND
LENGTH OF PROGRESS TABLES**

| <i>History</i> | <i>Days Run</i> | <i>Estimated Average No. of Pages Saved</i> | <i>Savings at \$18 per page</i> |
|------------------------|-----------------|---|-------------------------------------|
| Assembly Daily | | | |
| Eliminate all ----- | 96 | 16 | \$1,536 |
| Assembly Weekly | | | |
| Retain as above ----- | 24 | 16 | 6,912 |
| Senate Weekly | | | |
| Retain as above ----- | 24 | 20 | 8,640 |
| Assembly Weekly | | | |
| Use short titles ----- | 24 | 6 | 2,592 |
| Senate Weekly | | | |
| Use short titles ----- | 24 | 3 | 1,296 |
| TOTAL ----- | | | \$20,946 |

Findings: The Histories are the bulkiest of the three daily publications of each house. Approximately one-third of this bulk is material other than the bill histories themselves. One portion is general information, much of which is available in the *Legislative Handbook* and in the visitors' pamphlets. A second portion consists of tables which enable legislators to follow their own measures and measures before them as committee members. The third portion consists of analytical tables listing by number the measures which have reached or passed a major stage in the legislative process.

Recommendations: (1) Remove all general reference material from the Histories, incorporating it in separate publications which may be revised at the pleasure of the Committee on Rules. (2) Reduce and simplify the amount of tabular matter as detailed above. Principal tables to be retained in *Weekly Histories*: "Recapitulation of Assembly (Senate) Measures, their Authors, and Committees Referred to;" "Senate (Assembly) Bills Approved by Governor, Chaptered and Filed with Secretary of State."

Estimated Savings:

| | |
|---|-----------------|
| General Information Sections----- | \$8,580 |
| Retaining "Recapitulation of Authors" only from personal reference tables ----- | 28,080 |
| Retaining seven selected progress tables----- | 20,946 |
| TOTAL ----- | \$57,606 |

CHAPTER IV

CONGRATULATORY AND MEMORIAL RESOLUTIONS

Findings: In the 1959 General Session, 282 congratulatory resolutions were adopted in the two houses. Preparation of presentation copies cost approximately \$12,000, an average of \$46 apiece. These varied from the simplest, a resolution typed on parchment paper with decorative printed margins, to presentation copies which were printed, with hand-colored margins and capital letters, and framed or placed in leather folders. Blank resolutions with decorative borders can be purchased in quantity for approximately 35 cents each.

Recommendations: (1) Adopt two standard resolution blanks, the more elaborate to be reserved for ranking government officials or former officials. (2) Resolutions to be typed on these blanks in a typeface that resembles printing. (3) Folders for protecting resolutions to be made out of appropriate heavy paper or cardboard, purchased in quantity. (4) The Rules of each house to be amended to give the Rules Committee authority to determine the appropriate format for presentation copies of all resolutions.

ESTIMATED SAVINGS—\$10,000

CHAPTER V

RESOLUTIONS IN JOURNALS, ELIMINATE VERBATIM REPRINTS

Findings: Resolutions are customarily printed in the Journal for the day of introduction, referred to committee, and reprinted in the Journal upon third reading and adoption even when there has been no amendment recommended. On other occasions, resolutions are voted upon first reading, when copies are available to the entire body only if they have been mimeographed.

Recommendation: Print resolutions in Journal on third reading only if amendments have been introduced. Otherwise refer to day and page in Journal on which they were introduced.

ESTIMATED SAVINGS—\$3,000

CHAPTER VI

LEGISLATIVE HANDBOOK

Findings: *The Handbook, California Legislature*, is an extremely useful reference volume, particularly to freshmen legislators and many interested persons. It should be available at the beginning of each session. A delay of over three months in 1959 was due primarily to waiting for the adoption of new Rules, and abolition of constitutional recess. Nine thousand *Handbooks* were printed in 1959 at a cost of a little over \$18,000, or \$2 a volume. The *Handbook* can be delivered more promptly, at a lower cost, if the Rules are printed separately. Minor savings can be realized by eliminating thumb cuts for indexing, and by eliminating certain marginal information.

Recommendations:

Estimated Savings

- | | |
|--|-------------|
| (a) Print the Rules separately_____ | \$4,400 net |
| (b) Eliminate thumb cuts _____ | 600 |
| (c) Eliminate information of marginal utility_____ | 3,900 |

*ESTIMATED TOTAL SAVINGS*_____ \$8,900

CHAPTER VII

COMMITTEE REPORTS

The cost of printing committee reports was approximately \$125,000 for 1959. Waste occurs in three respects: (1) overordering (2) lack of standard procedures for distribution, and (3) underediting.

At the present time, editions of 500 or 1,000 copies are found to be ample for many of the reports. On other occasions it is known that certain interests and organizations will ask for substantial numbers; mailing lists may at times be obtained beforehand and a forecast made of the demand. The following table gives examples of overordering:

SUPPLIES ON HAND OF SELECTED COMMITTEE REPORTS

| <i>Date ordered</i> | <i>Pages per copy</i> | <i>Copies ordered</i> | <i>On hand October 1959</i> |
|---------------------|---------------------------|-----------------------|---------------------------------|
| March 1955 ----- | 622 pp. | 12,000 | 4,000 |
| April 1956 ----- | 88 pp. | 5,000 | 3,450 |
| April 1957 ----- | 164 pp. | 8,000 | 3,000 |
| Sept. 1957 ----- | 604 pp. | 500 | 210 |
| March 1959 ----- | 231 pp. | 1,500 | 570 |
| March 1959 ----- | 118 pp. | 1,500 | 1,446 |
| March 1959 ----- | 120 pp. | 500 | 468 |
| Totals ----- | | 29,000 | 13,144 |

The printing plant customarily holds type for 60 days. On request, this period can be extended. In most cases, exceptional demands for a report can be determined within 60 days. Five hundred copies were printed of a 112-page 1959 report at a cost of \$1,545.60.

An additional 1,000 copies were needed. The type had been held, so the additional copies were printed at a cost of \$270.61, or little more than if all copies had been printed at once.

Standard distribution procedures have been established by the Senate. All reports are received from the printing plant by the Senate mail room. Senate secretaries furnish addressed mailing labels for reports which are to be mailed out. Postage costs constitute a separate item in the Senate Contingent Fund, and are not made a committee cost. Members desiring copies in bulk for distribution at a meeting pick up the necessary number of bundles at the mail room. Thus one man controls the entire reserve supply.

A measure for standardization in editing has been achieved by the Assembly. A guide for committee attaches was issued in 1954, which is now out of print. This included recommendations for makeup of the title page, materials to be used, and order of contents. Full efficiency, however, will not be achieved until a method of review is instituted to eliminate materials which are not germane to the subject of the report.

Findings: Committee reports constitute one of the major cost factors in legislative printing. Waste is due to overordering, lack of standard procedures for distribution, and underediting. The Senate has

achieved standardization in distribution. The Assembly has issued a guide for compiling committee reports.

Recommendations: (a) Authorize each Rules Committee to set standard printings: for example, 500 or 1,000 copies, plus sufficient to cover all distribution lists on hand, (b) empower each Rules Committee to order reprints as needed; (c) require Rules Committee approval, upon demonstration of need, for submitting to the State Printer a report which will run over 100 pages, including cover; (d) instruct the State Printer to keep type standing for 60 days on all reports, Rules Committee to authorize longer periods upon demonstration of need; (e) establish a standard procedure for storage and mailing of Assembly documents, following present Senate practice; (f) adopt a standard format for legislative committee reports.

ESTIMATED SAVINGS—\$25,000

CHAPTER VIII

LEGISLATIVE ADVOCATES' REPORT

Findings: Two documents have been issued at each recent legislative session pertaining to legislative advocates in addition to the reports of the Special Committee on Legislative Representation, which appear from time to time in the Journals. A 60-page *List of Legislative Advocates and Organizations and Analysis of Law Relating to Influencing or Attempting to Influence Legislation* was printed in May 1959. The first listing was an alphabetical list of legislative advocates and the organizations they represented, with the addresses of both. The second listing was by organization, with the legislative advocates representing each.

The second document is a photo-lithographed copy of the authorization and monthly expense statements of each advocate for each organization he represents. It is printed as an "Appendix" to the Assembly Journal. This ran to 1,908 printed pages in 1959. As the original documents constitute a public file, available to the public at all times during the year, the need for so voluminous a document is questionable.

Recommendations: Remove the requirement that legislative advocates' monthly reports be printed.

ESTIMATED SAVINGS—\$7,000

CHAPTER IX

DESK SETS OF BILLS

Findings: The Legislative Bill Room maintains on a current basis 185 complete sets of binders for the Histories, Journals, and Bills on File, for the use of all members, certain attaches, and the press. By the end of the session a maximum of six binders will be on the desk of each member. The bill room, however, continues to maintain 185 complete sets of binders for bills, as well. Several of these sets are located within the Assembly and Senate chambers. Others are available to members of the press. At the end of the session, certain members request that their sets be forwarded to their home offices. In recent years, the total used for any purpose has been less than about 40. The balance, 145 sets, is held for a time, and destroyed. The labor in sorting, filing, and restringing these binders is substantial.

Recommendation: Instruct the Legislative Bill Room to reduce the number of "complete bill binder" sets from 185 to 85; omit members' names from bill binders, so that they will be interchangeable.

ESTIMATED SAVINGS—

Up to \$20,000

CHAPTER X

CO-ORDINATION OF LEGISLATIVE PRINTING

Findings: The brief study conducted by this subcommittee shows the need for closer liaison between the Legislature and the State Printing Plant. The recommendations made to date have shown a potential saving in legislative printing costs of more than \$200,000, with no curtailment in necessary services. Additional savings can be made and legislative printing expedited if responsibility for legislative printing is centralized.

Recommendation: Engage a printing coordinator as an attache of the Joint Committee on Legislative Organization, with the following duties and responsibilities:

1. Assist Assembly and Senate clerks in preparation of copy;
2. Advise interim committee staffs on format of reports;
3. Represent legislative interest in dealing with the State Printing Plant;
4. Co-ordinate and expedite copy delivery to minimize printing plant overtime;
5. Study further means of economizing on legislative printing. See recommendations in the following chapter.

ESTIMATED SAVINGS—

No estimate.

CHAPTER XI

MISCELLANEOUS

(A)—Pre-printing of Bills

Findings: Substantial amount of printing plant overtime can be saved during the session if bills which have been drafted are submitted by their legislative sponsors to the Speaker of the House and the President of the Senate, respectively, at the earliest moment following the October 1 preceding each session.

Recommendation: Assign printing coordinator to study this problem further, under direction of the Joint Committee on Legislative Organization.

(B)—Earlier Sessions for Both Houses

Findings: Labor charges at overtime rates materially increase the legislative printing bill. The State Printer has informed the Subcommittee on Legislative Printing that overtime could be materially reduced if it were not necessary to employ linotype operators, proofreaders and pressmen on other matters during parts of the evening and midnight shifts while waiting for late copy, then paying overtime rates to get the legislative printing out by mid-morning.

Recommendation: Invite the two Rules Committees to consider wisdom of earlier sessions.

ESTIMATED SAVINGS—

Up to \$70,000

(C)—Visitors' Literature

Findings: There are at least seven pieces of literature designed for free distribution to school children and other visitors to the Legislature. Much duplication occurs in these publications, and a great amount of material unrelated to the Legislature also appears. Savings will result, not only from reducing the number of items set in type, but from reducing the number of books and leaflets which each visitor may collect.

Recommendation: Instruct the printing coordinator to continue studies of this subject.

(D)—Amending Legislative Copy

Findings: Savings and increased accuracy will result if attaches of both houses use a single method of preparing copy for amended bills.

Recommendation: Request the Rules Committee of each house to instruct the Secretary of the Senate and the Chief Clerk of the Assembly to consult jointly with the state printer to determine the most efficient style of copy for bill amendments, and to adopt that style.

(E)—Style Manual and Guide to Compounding

Findings: For a number of years, bills, resolutions, journals, histories and files were set in print according to a "Legislative Style Book" drawn up by the State Printer and attaches of both houses, according to a concurrent resolution. Because individuals refused to follow standard spellings or rules laid down in the *Guide to Compounding*, expensive changes have at times been made in certain bills and codes.

Recommendation: Instruct the printing coordinator to consult with the State Printer, Legislative Counsel, Secretary of the Senate, and Chief Clerk of the Assembly in drafting a "Legislative Style Book" and other standard references to submit to the Legislature for adoption. For all other legislative printing, adopt the *Style Manual* issued by the State Printer.

(F)—Offset Printing of Legislative Bills and Other Legislative Documents

Findings: Information from the State of Washington indicated possible savings of 25 percent on legislative printing by using offset presses. Sufficient data on capital costs was not available for a firm conclusion to be reached.

Recommendation: Instruct the Joint Committee on Legislative Organization to continue its study of the costs of offset printing.

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PROGRESS REPORT OF THE
SENATE FACTFINDING COMMITTEE ON NATURAL RESOURCES
(Created Pursuant to the Provisions of S.R. 135, 1959 General Session)

REPORT ON RECOMMENDATIONS OF THE MANAGEMENT
CONSULTANT FIRM OF BOOZ, ALLEN AND HAMILTON
RELATIVE TO PROPOSED CHANGES
IN THE ORGANIZATION
OF THE
DEPARTMENT OF FISH AND GAME

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Executive Secretary

FOREWORD

The Senate Fact Finding Committee on Natural Resources held a public hearing December 10 and 11, 1959, to consider the recommendations on internal reorganization of the Department of Fish and Game, which were proposed by the management consultant firm of Booz, Allen and Hamilton in its "Report on Survey, Department of Fish and Game," dated December 8, 1958.

The committee's report reflects the appraisals presented during the subject hearing as well as information and analyses subsequently secured. Also included are conclusions and recommendations by the committee based on the material available.

Since many of the analyses and recommendations contained herein concern certain fiscal aspects of the department, the committee felt that this report should be made available during the 1960 Session of the Legislature, for consideration by the Legislature in its appraisal of the budget and programs of the department.

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REPORT ON RECOMMENDATIONS OF THE MANAGEMENT CONSULTANT FIRM OF BOOZ, ALLEN AND HAMILTON RELATIVE TO PROPOSED CHANGES IN THE ORGANIZATION OF THE DEPARTMENT OF FISH AND GAME

SUMMARY AND CONCLUSIONS

The Senate Factfinding Committee on Natural Resources considered the various recommendations of the firm of Booz, Allen and Hamilton on suggested changes in the internal structure and shifting of responsibilities within the Department of Fish and Game, at its hearing in Sacramento, December 10 and 11, 1959.

The BA&H recommendations, which are outlined in the body of the committee's report, are of such a nature that about every field employee of the department, as well as many employees in central headquarters, would be directly affected. Consequently, almost every program within the department would be involved. The committee, therefore, felt it was imperative and timely to consider these recommendations and entertain appraisals from every interested source to provide the committee with the material necessary to make an objective analysis of the suggested revisions.

The recommendations on organization constitute only a small portion of the total number of recommendations contained in the management firm's report. A large number of the proposals in the report have been or are being put into effect and, as stated by the department, are already providing beneficial results. This fact would tend to support BA&H's general approach which resulted in the soundly based comments found throughout its analysis.

The committee is of the opinion that the same appraisal is applicable to BA&H's recommendations on organization; however, since the initiation of the proposed changes in this area would involve major plant and personnel revision, it was felt that it would be advisable to first test the workability of the department's present organization, and approach the alleviation of problems as identified by BA&H through the process of modifying administrative rather than organizational controls.

The following recommendations of the committee refer directly to the seven major points contained in the proposals on organization made by BA&H, and are further elaborated on in the body of this report, through an evaluation of the alleged problems and the presentation of alternative proposals for solving them within the present framework of the department.

RECOMMENDATIONS OF THE SENATE FACTFINDING COMMITTEE ON NATURAL RESOURCES

A. Relating to BA&H proposals found on page 8 of the report:

1. Do not reorganize the department by establishing districts with district managers.

2. Do not establish a generalist position to take the place of the current specialist classification.
 3. (a) Do not withdraw the field line authority from the regional specialist supervisors.
(b) Do not add information officers to Region I, II, IV.
(c) Add an assistant regional manager to each region.
 4. (a) Establish a planning procedure as recommended by BA&H but do not add an Associate Director, Plans.
(b) Reorganize departmental headquarters to place Deputy Director over other subdirector classifications and assign planning co-ordination to that position.
(c) Add an Associate Director, Operations.
 5. (a) Centralize all fiscal and accounting operations at department headquarters, including personnel and licensing activities.
(b) Delete 35 regional positions and add 21 headquarters positions.
 6. (a) Do not realign regional boundaries to reduce number of regions to four.
(b) After centralizing fiscal and accounting activities, clarifying of administration directives, and establishing of objectives and planning to achieve those objectives, re-appraise regional boundary delineation recommendations.
 7. Similar to Recommendation No. 1, i.e., do not establish districts.
- B. Additional committee recommendations relative to these proposals:
8. The department should proceed to conduct a review for formulation of administrative policies and directives along the lines suggested on page 16.
 9. The department should initiate a general training indoctrination program to acquaint all employees with the objectives and interdependence of each function, with the goal to achieve unity of effort and integrated co-operation and co-ordination.
 10. The department should immediately initiate a review of each biologist, game and fish manager position to insure that the time of each is completely and productively utilized in achieving necessary predetermined management goals.
 11. Set up a control in department headquarters which provides the Associate Director, Operations, with a day-to-day picture of individual warden assignments and deployment for use by him in co-ordinating warden movements under emergency conditions.
 12. Set up a "followup" file in the office of each functional branch chief to receive copies of certain agreed to types of correspondence from field personnel so that action is insured and each functional chief can be kept aware of important field conditions.

ANALYSIS OF THE BOOZ, ALLEN AND HAMILTON RECOMMENDATIONS ON INTERNAL ORGANIZATION AND MANAGEMENT OF THE DEPARTMENT OF FISH AND GAME

EVENTS LEADING UP TO THIS STUDY

During the 1957 Regular Session of the Legislature, it became apparent from all data available that income to the Department of Fish and Game would have to be increased if its services were not to be seriously curtailed. After considerable thought, a fee structure was established which, based on the fragmentary program cost analyses then available, was to provide a license format which would, as near as possible, result in the defraying of the cost of the various field activities of the department by the license buyers participating in sports related thereto. Because of the lack of information available at that time, this goal was not completely achieved. However, the overall income to the department was enhanced to the point that deficit spending was halted and a surplus resulted.

The Legislature passed the license increase measure which was signed into law July 6, 1957, and became Chapter 1887 of the statutes of that year. In addition to specifying the various license and fee increases, the chapter also provided that "... 50 percent of all revenue attributable to the increase in license fees . . . shall not be available for expenditure unless and until specifically appropriated by the Legislature . . . "

Another provision, the one which gave rise to the Booz, Allen and Hamilton survey to be discussed in this report, appeared in Section 16 of Chapter 1887, appropriating \$100,000 from the Fish and Game Preservation Fund to the Legislative Budget Committee "... for a contract or contracts for the study of existing and future programs and plans of the Department of Fish and Game and the policies of the Fish and Game Commission . . . " The \$100,000 was to be made available from the so-called "frozen" 50 percent referred to in the preceding paragraph.

The Legislative Budget Committee, through the Legislative Analyst, invited bids for the survey. As a result of a hearing before the Legislative Budget Committee involving comments from the bidding firms, the management consultant firm of Booz, Allen and Hamilton was awarded the contract.

This firm then proceeded to contract with eminent experts in the field of wildlife conservation, who were not only qualified to provide recommendations on the management of specific wildlife species, but were also qualified to assess and make recommendations relative to the interrelation of departmental administration and wildlife management programs.

The BA&H firm published its report under date of December 8, 1958, and released it for public distribution and review shortly thereafter. It

was obvious that the report was not going to be given a *carte blanche* endorsement by any one organization, including the department, or the Legislature as a whole. It was equally clear that interest ran high in the report and the background information which gave rise to the many recommendations contained therein. As a result, many areas of study assigned to the committees of both houses of the Legislature having to do with fish and game had a bearing on portions of the report.

The Senate Committee on Natural Resources considered that section of the BA&H survey titled "Wildlife Management Operations Should be Further Decentralized and Supporting Services Should Be Centralized" as one of the key sections, since the disposition of these recommendations would have a direct effect on most of the other sections, to a certain degree. Although the number of fish and game in the field certainly would not be affected by accepting or rejecting the recommendations having to do with the degree of centralization, nevertheless, a change in the organizational structure and internal management of the department could have an effect on the degree of emphasis on and protection afforded any particular species, as well as on services to the public and the ultimate cost of operating the department.

This committee called a hearing in Sacramento, December 10 and 11, 1959, to consider these aspects. The specific recommendations contained in the BA&H report which were before the committee are:

1. The basic unit of fish and game management should be a district, supervised by a district manager.
2. Personnel assigned to work under a district manager should be essentially generalists, capable of carrying out all of the basic field activities.
3. The next level above the district should be the region, supervised by a regional manager.
4. Department headquarters should be the top-level part of departmental organization. (Recommendations for top-level organizational changes.)
5. Fiscal and accounting activities should be centralized at department headquarters.
6. Four regions are recommended.
7. Twenty-two land districts and three marine districts are tentatively proposed.

This report will consider each recommendation, presenting all impressions received at the hearing and elicited from other material made available to the committee. Each section will attempt to clarify the position of the committee in arriving at the conclusions and recommendations found at the beginning of this report.

BA&H RECOMMENDATIONS WITH ANALYSES

SECTION ONE

BA&H Recommendations Nos. 1 and 2: "The basic unit of fish and game management should be a district supervised by a district manager" and "Personnel assigned to work under a district manager should be essentially generalists, capable of carrying out all of the basic field activities."

DISTRICTS

The first recommendation can only be logically considered as an integral part of the succeeding recommendation having to do with the so-called "generalist" position.

The districting concept involves the establishing of 3 marine districts and 22 land districts, the boundaries of which would follow natural topographical lines enclosing individual watershed areas as nearly as possible. The management consultant firm conducting the survey presented as possible benefits of such decentralization that (1) such a move would reduce the number of supervisory levels, thus enhancing program execution, (2) would result in greater economies in administrative and clerical functions, (3) would maximize employee utilization and unity of effort, (4) would improve program planning and (5) would result in greater public acceptance of departmental programs.

In effect, the present direct-line responsibility of the various regional game, fish and warden supervisors would be replaced by a combination line-staff responsibility.

The district managers would receive the line responsibility to supervise the basic field activities which include, according to BA&H:

- (1) law enforcement, as a principal field activity;
- (2) fact-gathering, such as conditions of range or stream, population counts, bag-catch counts, etc.;
- (3) basic wildlife management activities, such as range improvement, rough fish control, stream flow maintenance, etc., as can be accomplished within the resources of the district;
- (4) conservation education, with special emphasis on developing community relationships.

It is obvious from these points that the districting arrangement must, of necessity, involve generalist-type supervisors and employees within the districts. If this were not the case, the number of districts contemplated would necessitate a sizable addition of personnel to staff each district with game, fish and warden positions. Also, in this case, it would be difficult to maintain effective control, since a generalist supervisor would be in charge of specialist group programs without the benefit of line direction from a regional specialist supervisor. If the proposed number of districts were decreased but specialists retained to

conform with the existing complement of personnel, the latter problem would not be overcome. It is only logical to assume, then, that distrioting and the generalist concept are completely interdependent.

Certainly the generalist approach is not without merit. The person who could perform all law enforcement responsibilities, including apprehension, arrest, preparation of cases for court, anticipation of problems for preventive action to reduce violations, etc., and also be able to execute orders needing intimate game and fish specie familiarization, would be extremely desirable. However, on the practical side, sufficient personnel having these attributes plus the ability to pace themselves to cover all the bases and sublimate their individual bents to provide equal emphasis to all programs are simply not available.

Although BA&H points out that only certain basic field activities would be assigned to the generalist, with specialist aid to be provided from regional headquarters, it is difficult to draw the line between what constitutes specialist and non-specialist activities in many cases. Training would certainly serve to clarify these activities to a certain extent but would not insure that the desired information to be supplied by a generalist would constitute a fact based upon supportable technical knowledge, rather than an opinion. Also, the collection of data may ignore certain facets which were not within the purview of the generalist's primary training and interests. Actually, at the present time, the majority of simple fact-gathering is accomplished by seasonal aids, the relatively small complement of full-time fish and game assistants, and the wardens. BA&H recognizes the necessity for extremely able leaders in the position of district manager to insure that all programs receive the same emphasis dictated by the conditions. Here, again, the securing of personnel of the proper degree of training and the necessary attitude is the primary problem.

The report recognizes this condition and suggests that a transition period of several years might be involved. In the event that a decision were made for a long-range transition to the district generalist concept, it would appear that a specific training course or college curriculum need be initiated. However, before serious consideration is afforded this concept, there are many factors which must be taken into account to aid in determining if such effort should be expended.

BA&H states that "... those activities requiring a higher level of educational or technical training and those activities which are highly specialized which require extensive co-ordination between regions and districts were purposely not assigned to the district."

This would presume that the warden does not need technical training nor that warden activities need extensive co-ordination. Many differences of opinion have been expressed as to the former point. Certainly an efficient warden must be of the proper temperament in the first place to insure placing conservation and protection ahead of arrest emphasis in importance—he must be well versed in all aspects of the Fish and Game Code, in detection ability, and many other law enforcement procedures similar to most types of police activities but dissimilar in their execution, in order to maintain public acknowledgement of the need for this type of activity for preservation of wildlife species.

Also, the co-ordination of wildlife protection activities constitutes a continuing need and is one of the most difficult intradepartmental

problems existing at the present time. This report will make recommendations in this area in another section, but suffice it to say here that even in the face of specific procedural mandates, the problem of the movement of warden personnel between regions is acute. It seems only logical to assume that this condition could be aggravated multifold if the sixty-some subdistricts per region, as recommended by BA&H, are implemented. This would result in the need for more co-ordination than now exists because of the additional number of areal assignments.

Wildlife Problems

Fish and game species and law violators do not generally move in the same direction nor at the same time. However, as often occurs, they may need attention at the same time.

Testimony before the committee brought out the fact that the law enforcement officer must extend his workday well beyond the eight-hour bounds to effectively execute his responsibilities. If a subdistrict assigned to a conservation officer-generalist contained a major stream section which was heavily fished and was subject to various types of pollution, as well as a deer herd and upland game population which required continued surveillance, the effectiveness of the generalist would be seriously curtailed unless one or two of his responsibilities were given only cursory attention, or unless additional personnel were provided.

Unfortunately, wildlife cannot be considered in the same light as manufactured piecework with controlled production. There are many peak activities such as occur as a result of severe weather conditions which cannot be attacked until they actually arise. Even during the peak of one wildlife activity, continuing attention must be given to other activities for consistent analyses for use in formulating specie management procedures. If additional personnel were placed in a subdistrict as generalists over that number contemplated in the report, perhaps these problems could be overcome, but then the generalist concept may be aborted since workload attributable to the existing game, fish and law enforcement needs of the subdistrict would probably result in individual assignments.

Supervision

Although BA&H emphasizes a need for informal communications under the district-generalist system to insure expedient activation of orders and following through on field requests, this informality cannot be to the degree that intermediate supervisory levels are continuously bypassed. If a conservation officer under a district manager can contact either the regional specialist supervisor or the regional manager directly, without first consulting with the district manager, not only would this result in a greater demand on the regional staff than exists at present, but also the district manager might become completely ineffective and serious personnel problems could arise.

Under the current line and staff organization, a specific request from department headquarters requiring a field investigation in a certain geographical area of any function would proceed to the regional manager, thence to the regional specialist supervisor involved, and then to the field unit actively engaged in the project. Under the system proposed, the order would proceed to the regional manager, who would

naturally consult with the regional staff specialist involved, thence to the district manager and on to the subdistrict conservation officer or officers whose areas are involved. It would seem that an additional step is involved in the proposed organization than now exists, with the reverse flow of information also to be considered. Additional supervisory levels always present the opportunity for diverse interpretations, which would naturally tend to slow down the information flow and could possibly cloud the original intent.

BA&H feels that its recommendations would result in less supervisory levels. The existing and proposed levels are shown below for wildlife protection matters:

| <i>Existing</i> | <i>Proposed</i> |
|--|----------------------|
| Departmental director or deputy director | Same |
| Regional manager | Same |
| Wildlife protection supervisor | District manager |
| Patrol captain | Conservation officer |
| Warden | ----- |

This procedural analysis would tend to support BA&H; however, in reality the position which has been overlooked by BA&H, but which still would exist, is the regional wildlife protection supervisor. Although not in a line capacity under the proposal, certainly the regional manager would be remiss if he did not counsel with this supervisor before directing the special request or order to the field. This allegation also ignores the fact that an additional position, that of Associate Director—Plans, has been placed between the departmental branch wildlife protection chief and the director in the proposed plan. Therefore, in reality, more supervisory levels would exist in this activity if formal lines are followed under the proposed organization than now exists. If informal lines of communication are permitted to shorten the contact procedure, the complications referred to in a previous section of this analysis could occur. It must not be overlooked that a relaxing of formality could be initiated in the existing line relationship if determined to be feasible or advisable.

In the game management and fisheries management functions, the proposed organization might shorten communications; however, the game and fisheries managers are performing specific functions, such as stream improvement, game habitat improvement, etc., and supposedly these personnel are employed on a workload basis to perform specific management activities. This report will comment on the need to review each biologist and fish and game manager position to determine if the work being performed is necessary to execute the department's responsibilities.

It is important to emphasize that some field activities require a minimum of supervisory levels at present, while others, as pointed out by BA&H, entail several levels. There is a danger that the rigid districting concept may create more supervisory levels than now exist in many instances where there is now a direct line from the regional specialist supervisor to a basic field activity. Even within the three major functions of the department, there are many heterogeneous responsibilities, each of which must be examined before a general statement of the present adequacies of supervision can be made.

In almost every chapter of the BA&H report, some comment was made on the lack of firm administration and clearly defined directives. The proposed organization would certainly permit the assigning of responsibilities on a more detailed step-by-step basis. However, no form of organization can overcome a lack of concise directives and adequate management to implement those directives. Conversely, a firm administrative policy which recognizes the importance of counseling with the field forces in formulating those policies can usually succeed even though the lines of organization leave something to be desired.

It would seem that a long enough period of time has elapsed for all department employees to have successfully made the transition from the former bureau system to the line and staff concept which was fully implemented by 1953. Partially because of reluctance on the part of some employees to accept the change in supervisorial contact, and partially because of a lack of concise mutually agreed upon policies and administrative guidelines, the optimum success available within the present organization has not been realized.

As a result of population shifts and a greater variety of demands on the State's natural resources, changes in the emphasis on various facets of departmental efforts have occurred, such as from a limited, routine appraisal and inventory of the waterways and natural lakes to the constant pressures for action and consultant services to keep pace with statewide pollution and water project problems. Also, it cannot long be ignored that the State is at the crossroads in at least two of its wildlife programs which cause considerable turmoil even within the department itself, i.e., artificial versus natural game bird and trout programs. An obvious lack of complete flow of field comments and recommendations to headquarters has not helped morale, thereby compounding the problem of securing on-the-ground, consistent presentation of departmental rather than individual policy interpretations which in many cases has resulted in the alienation of local sportsmen groups.

The committee feels that the present line and staff organization, with some minor refinements, is sufficient to support the type of administration desired by the Legislature, sportsmen, and departmental employees. It also feels that any major change at present in shifting responsibilities would serve only to further complicate the problems mentioned.

Administrative Policy Formulation Recommendation

It appears that the first and foremost action which must be taken by the department is to thoroughly review all of its administrative policies and directives. This review must be started on the field level within each region. Every employee in the specialist classifications must have the opportunity to present his comments. Then, the regional specialist supervisors and their unit supervisors must discuss these individual appraisals and recommendations to correlate all programs and to make concessions where necessary. The regional managers and their supervisors must then review the appraisals and recommendations coming out of each region to serve as a basis for a unified program to be taken to departmental headquarters for the final review, screening and devising of action policies and directives. If final departmental decisions are at odds with the indicated majority feeling of the field, these

decisions must receive field review and appraisal again to test their workability. *When a final product is established, that product must of necessity be supported by all employees, even though there may be minority opinions.*

Cost of Establishing Districts

The BA&H report estimated a total of \$15,000 as a cost of establishing 22 land districts, while the department estimated the cost of 18 district offices at \$189,702. The difference here results in a basic disagreement of what constitutes a district office.

BA&H envisioned only minimum space rental where necessary, a place for the district manager to "hang his hat," so to speak, and to complete his reports. The department feels that a district office, to serve in the capacity outlined in the BA&H report, must have a person on duty during the workday, radios, office equipment, and so forth, such as exists in Eureka, Bishop, San Diego, and Monterey. It is felt that these four offices are so constituted because of their location remote from their regional offices, and should not exemplify a typical district office under the proposed arrangement. Certainly the district offices, as recommended by BA&H in other parts of the State, would not have to be so constituted, but it is felt that they would average more than the \$700 each per year in additional costs estimated by that firm. Also, as has been the case in other such instances, once a field facility is established it immediately becomes a logical location to accommodate expanded staff for workload pressures evolving from such establishment.

In consideration of the factors discussed, the committee would recommend that any reorganization along the districting lines be held in abeyance because of the following possible results:

1. There is a definite danger of an immediate increased cost to the Fish and Game Preservation Fund of an unknown amount, with continuing increases probable in subsequent years.
2. It appears that districting might increase rather than decrease supervisory levels affording possibly more room for policy misinterpretation.
3. Freezing basic law enforcement in district boundaries might strangle rather than enhance co-ordination of this activity as between operating units.
4. It seems that it would be extremely difficult to delineate district boundaries which would permit management of any given wildlife resource population within those boundaries. If this were the case, continuous co-ordination would be necessary between several districts, giving rise to supervisory problems and making it difficult to assign primary responsibility.
5. It would seem also that the success of a district would depend to a great extent upon the attributes of the individual generalist. It is the general consensus that qualified people are not now available in enough numbers to provide statewide consistency under this concept. Also, even the most stringent training would not keep a person now in the wildlife field from emphasizing that particular phase of wildlife with which he is most familiar and in which he is most interested.

In weighing these factors, the committee feels that there is a possibility that if the districting organization were initiated, the problems of disunity now plaguing the department might only be compounded. The committee is also of the opinion that the success of the current departmental organization structure cannot be accurately assessed until there has been a review for possible changes in administrative policies and directives.

THE GENERALIST

Although districting would be impracticable without a complement of generalists, the generalist concept could conceivably be initiated under the current organization without any supervisorial level changes.

However, the need for generalists in lieu of specialists must be assessed to determine whether or not such an approach warrants serious consideration.

BA&H recommends the generalist concept as a partial solution to the need to unify effort in field operations. The consensus is that this lack of unity existing within the department is, in part, an outgrowth of the lack of indoctrination of each functional specialist in the problems of the other functions, as well as a lack of integrated co-ordination of all department activities. The point which cannot be overemphasized to and engrained in all department employees is that their individual efforts are only an important component of the collective goal of the department, which is to achieve wise and progressive wildlife management for the maintenance and enhancement of the State's wildlife resources. The committee feels that BA&H in emphasizing the presence of disunity has struck the one major chord underlying most of the department's problems resulting in the failure to achieve the desirable level of smooth intradepartmental operations and public acceptance of its programs. However, the committee does not feel that the generalist concept will necessarily overcome these problems.

A man's job designation may be changed and he may be exposed to training in all areas of the department's activities, but it would be a rare individual who could successfully overcome his natural inclinations to afford equal emphasis on all programs or absorb an equal amount of knowledge in each to be reflected impartially with equal success in game, fish or wildlife protection. It is felt that a thorough realization by each employee of the collective responsibility of the department in wise resource management, plus a thorough, integrated indoctrination, will serve to clarify the point that it is each man's individual responsibility, in addition to his primary duty, to keep abreast of problems in other functions and to provide aid where possible within his knowledge and ability. If properly implemented, this approach is possible without creating the discordance brought on by a false sense of exclusive proprietorship in individual assignments. The committee feels that this approach can accomplish the aims of BA&H in presenting its generalist proposal, and certainly should be given adequate time to succeed before pursuing the generalist concept. However, realistically there must first be a self-appraisal by the department to determine wherein lie the attitudes on the top level which have tended to perpetuate certain field rivalry and disunity between the various functions, referred to in the survey.

Once a more positive and concise explanation has been made of each individual's role in successfully attaining the department's responsibility, the committee feels confident that self-policing by personnel will make such a policy workable and tend to perpetuate it.

Overspecialization can create as many problems as overgeneralization. The need for specialization to cope with today's heterogeneous problems is universally recognized, but often this specialization can ignore its basic responsibility to fill a void in the knowledge required for integrated management. Therefore, continuing informed administration is necessary to insure that the game and fish biologists in the department do not "spin their wheels" while engaging in research which does not contribute to the department's wildlife management goal, even though they may produce information of interest to others in basic research.

It is felt that a review of each biologist's activities is necessary to insure that his time is completely and productively utilized in achieving necessary predetermined management goals. All research being performed on department time which cannot be justified under a planned program must be eliminated. Also, no biologist personnel should be used on routine projects which can be performed within the capabilities of the existing fish and game aide or assistant position. These two extremes must receive an immediate consideration in a reappraisal of the workload of these specialists. An analysis of the daily personnel reports and a comparison of functional plans with employee activities can serve as a foundation of such an appraisal.

The committee feels, therefore, that the objectives of BA&H in recommending the generalist can be satisfied by initiating a more adequate combination of specific planning and integrated departmental direction to achieve the objectives of those plans, within the existing classifications.

SECTION TWO

BA&H Recommendations Nos. 3 and 4: "The next level above the district should be the region, supervised by a regional manager" and "Department headquarters should be the top level part of departmental organization."

These two recommendations are a restatement of the existing organizational structure of the department and tend to support it.

Regional Organization

The only basic differences recommended in the regional structure are tied with the district-generalist concept. This would change the regional specialist supervisors from their present line capacity to a combination line and staff capacity wherein the responsibility for the direction of all field activities exclusive of installations such as hatcheries, game farms, and waterfowl management areas would be vested in the district manager who would receive direct supervision from the regional manager. Since it is the committee's recommendation that the districting concept not be approved, obviously the regional specialist supervisor must be retained in his direct line field responsibility capacity if the committee's position is supported.

One other recommended position found in the BA&H report involving regional organization merits consideration. Regions III and V, with headquarters in San Francisco and Los Angeles, respectively, now have regional information officers. The BA&H report proposes to extend similar services to the other regions and to the Marine Resources Operations. The report outlines some very sound conservation education approaches which could be extremely beneficial toward systematizing the department's public relations approach, eliminating certain of the department's less productive information efforts and emphasizing target groups for potentially more fruitful results.

However, no individual can be effective in his job without the material and procedures pertinent to his operation. BA&H recognizes the necessity for effecting a change in the department's approach and attitude in conservation education and has made some very comprehensive recommendations in this area. It has been frequently borne out that the mere allocation of funds for public relations purposes without a specific achievement plan will not in itself produce the results desired. Primarily, the BA&H recommendations point out a need for overhauling publications to provide more material of an objective and informative nature which would be of greater interest to a larger segment of the population; to develop more direct methods for disseminating information; to thoroughly acquaint all personnel with the department's conservation education objectives and the methods of establishing fruitful communications, both intradepartmental and to the public; and to establish clear directives for a consistent productive method of securing information from the field for the compilation of information.

The committee feels that these factors must be satisfied before an expansion in personnel to disseminate the information can be justified. The conservation education section has already made inroads in this area.

Therefore, relative to specific positions, the committee recommends against the approval of the field public relations officer proposed over and above the personnel assigned to that function in Regions III and V.

There are other recommendations contained in the BA&H report which affect the regional operation, such as the clarifying of planning responsibilities. However, since these recommendations are not dependent upon the districting-generalist concept and do not affect the organizational composition of the region, this report will not attempt to evaluate them. It is incumbent upon the department to integrate these administrative recommendations into its operation and in many instances has proceeded to do so.

New Position Proposed

As noted in Section Three of this report, the committee is recommending the centralization of business, personnel and licensing activities. In doing so, the committee also recognizes that certain residual business management activities and fiscal consultation needs will remain in the region.

This report, in a subsequent section, points out the benefits to be derived by organizationally placing the deputy director between the director and other subdirector classifications, as well as the administrative problems which prompted this recommendation. Many of these

same operational difficulties in department headquarters find a parallel in the regional organization. The present structure places the regional manager over the fish, game, wildlife protection and business functions. When the manager is absent from headquarters for any reason, he appoints one of the regional functional supervisors to act as manager in his absence. There is a basic weakness in this process. No individual receives continuous identification as the alternate contact in the region for consistency of program. The specialist supervisor must become the generalist when called on. His specific responsibilities must be given the same consideration as each of the other functions when making decisions which may affect all activities. His primary duties must of necessity suffer while he serves as acting regional manager, or effective regional management will suffer if his emphasis continues on his basic responsibilities.

A condition such as this would necessarily influence the regional manager's attitude toward field inspections, extensive public relations efforts, and any other type of activity which, although having a direct effect on the success of regional operations, nevertheless cannot be physically measured, and no specific accountability can be required. Naturally, the regional manager would and does have a tendency to remain close to his desk, consequently losing touch with field conditions.

This committee, in recommending for an assistant regional manager, does not necessarily make such recommendation contingent upon the centralizing of business and license activities, because it is felt that the establishing of this position would eliminate the necessity for a business service officer and make for a stronger regional operation, in any event.

It is felt that the following specific benefits would accrue if an assistant regional manager position is established:

1. Continuity of regional direction in the absence of the regional manager.
2. Will provide for enhancement of business management aspects of specific wildlife management programs.
3. Will permit for more systematic and frequent headquarters inspection of all field activities.
4. Will permit for a more expanded and concentrated public relations effort.
5. Will permit for a more realistic regional budget formulation based upon actual observed field conditions and needs. This will engender more departmental confidence in regional requests and provide the Department of Finance, the Legislative Analyst, and the Legislature with more concrete budget appraisal data.

Departmental Headquarters Organization

The major change in departmental headquarters organization recommended by BA&II is the proposal to add an associate director of plans with the functional branch chiefs directly responsible to that position. The deputy director would be in charge of regional operations, an associate director would be responsible for housekeeping operations, and an assistant director would be vested with the responsibility for conservation education activities. All of these subdirector positions would be directly responsible to the departmental director.

The lack of co-ordinated planning existing in the department gave rise to the BA&H recommendation to define and intensify this operation. The management consultants made an excellent coverage of this subject and outlined the requirements necessary for effective planning.

Planning, as explained by BA&H, is necessarily a continuing function, especially in fish and game activities which experience so many variables. Both long-range and short-range plans must be constantly extended, appraised, and modified to keep department activities current with real and anticipated conditions affecting its wildlife management responsibilities.

The committee is cognizant of the need for deliberate, well organized and valid planning and is in full agreement with the concepts presented in the BA&H report. However, it is also felt that some modification of the proposed organization structure to implement planning is in order, to insure closer liaison for integrated planning.

The committee agrees that one additional subdirector classification is necessary to permit the assigning of specific responsibilities for overseeing related operations. However, the refinement recommended by the committee is to establish a direct line relationship whereby the deputy director is organizationally placed between the director and all other subdirector classifications, and to assign the planning co-ordination responsibility to the deputy director. Therefore, the additional position to be added would be associate director in charge of regional operations, instead of planning. The functional branch chiefs would then be directly responsible to the deputy director, and the organizational makeup would be as reflected in Chart 1.

The committee recognizes the importance of the planning function and is well aware that a carefully devised approach to initiate effective planning will be time-consuming. However, once specific guidelines are laid down and placed into operation, it is felt that an able administrator in the deputy director position, in a line relationship, can perform other services for the department director in addition to his planning co-ordination responsibility. Also, he would be in a more favorable position to weigh the planning product with fiscal facts available from the Associate Director—Control. Another side benefit would be that more positive and continuing administrative control could be effected by him than if he were only responsible for the direction of the department in the absence of the director, as proposed by BA&H. These conditions, plus the very important fact that either he or the director would be in a position to make planned field inspections for the necessary, continuing familiarization with actual operating conditions without disrupting consistent control, prompted the committee to offer this recommendation.

Wildlife Protection Supervision

The California Fish and Game Wardens Protective Association, in appearing before the committee to oppose the generalist approach, also recommended a return to the bureau operation for the wildlife protection function, which was in existence before departmentalization in 1953. As recommended by this association, the wildlife protection supervisor, while retaining his organizational place in the region, would be

directly responsible to and would receive his supervision directly from the branch wildlife protection chief in headquarters.

Many conditions and individual occurrences can be identified which undoubtedly gave rise to the association's proposal, which were alluded to in the general statement by this group that the regional managers, not being intimately familiar with wildlife protection, could not effectively cope with the problems peculiar to this function.

The committee feels that, primarily, this development is more a fault of administrative rather than organizational inadequacies. It is felt to be more advisable to incorporate certain procedural steps to alleviate the problems presented by the warden's association, rather than to compound administrative difficulties by effecting a system which might cloud responsibilities and create dual and possibly opposing authorities.

As outlined by both BA&H and the department, peak loads can generally be anticipated in all functions of the department to permit advance planning. However, emergency conditions can occur as a result of extremely adverse weather, physical plant failures, unexpected hunter and fishermen concentrations, etc., which require immediate action. Generally, wardens can adjust to the requirements necessitated by fisheries and game management emergencies, but seldom can game or fisheries personnel be satisfactorily used for wildlife protection emergencies unless a continuous training program is employed. It is the contention of warden personnel that the currently cumbersome method of securing additional wardens in emergencies often hampers the effectiveness of this function.

At the present time, the warden who discovers the need for more warden personnel contacts his warden captain who, in turn, makes the request to his regional wildlife protection supervisor. If the supervisor determines that the deployment of the remaining wardens in his region will not permit a reassignment, he refers the request to his regional manager, who contacts another regional manager who must follow the same procedure down to the field level. In the event that the region from whom additional wardens were requested declares its inability to provide them, the asking region must either seek aid from another region or ask for help through the deputy director. A lack of clearly defined procedures has caused considerable confusion and some interregional dispute.

Another problem outlined by the wardens' association is that certain matters initiated on the field level have not received the proper consideration or have been completely eliminated at an intermediate supervisory level before being afforded a complete review.

These conditions are among those which have prompted the association to request line control from the chief of the wildlife protection branch. The committee recognizes the fact that these conditions could affect morale and work incentive; however, it feels that here again is a situation that reflects an administrative rather than an organizational problem, which could possibly be alleviated by:

1. Providing a control point in the department headquarters operations section where a continuous file on individual warden locations and assignments would be maintained, so that requests for such personnel under emergency conditions could be acted on by the Associate Director, Operations.

Large movements of personnel between regions for anticipated needs could be planned on the departmental level by the Associate Director, Operations, and the wildlife protection branch chief, using the location file as a basis for such determination.

2. The second problem discussed above could be alleviated by permitting field personnel to send a copy of certain types of correspondence to the appropriate branch chief, at the time the correspondence is directed to this immediate supervisor for consideration or action.

To effect this recommendation, there must be complete agreement between field personnel and all supervisory levels of the type of correspondence which may be so directed. Care must be taken to insure against reducing intermediate supervisorial control necessary for effective management.

The copies forwarded to department headquarters would be placed in "follow up" files for use by the branch chiefs in insuring an accounting of the action taken in individual cases.

SECTION THREE

BA&H Recommendation No. 5: "Fiscal and accounting activities should be centralized at department headquarters."

BA&H determined that there existed a considerable duplication of effort in department and regional headquarters accounting activities, as well as in the maintenance of personnel records. It also pointed out benefits to be derived from centralizing licensing.

As BA&H stated, "... It is significant that most regional personnel are located at widely scattered locations throughout the region. Consequently, the regional business service function is essentially a processing station separated physically from the majority of field personnel." Therefore, the transfer of these functions to departmental headquarters would eliminate the delaying action caused by material being first sent to regional headquarters and then to Sacramento. The further field locations are from the existing regional headquarters, the more pronounced will be the benefits to be derived by contacting department headquarters directly, especially if such field locations are physically closer to Sacramento. For instance, the southernmost field units of the northern region must now send sub-purchase orders, etc., north to Redding and then over the same route to Sacramento.

Ignoring the benefits of the time factor in the proposed accounting, personnel, and licensing centralization, additional benefits are to be derived from reducing the number of review levels with their consequent complications.

The regional business service officer at present has little control over expenditures within the various functions and it is certainly possible to set up controls in departmental headquarters to insure against expenditures exceeding budgeted quotas.

There are two major benefits to be considered by the proposal to centralize licensing in department headquarters. First, machine processing can serve to eliminate the need for certain additional space and personnel for this activity, and the over-all cost of license storage and excess stocking can be materially reduced. The BA&H recommendations

for streamlining the licenses and license purchase process can also reduce departmental filing requirements as well as eliminate the complicated reporting procedure now used by license agents. This move will also pave the way toward standardizing license commissions and reduce costly checking procedures, rebates, and charges.

The license agent commission structure existing at present produces inequities which will be eliminated if a straight percentage on gross sales is reinitiated. This will be possible if the department generally follows the BA&H recommendations pertinent to this subject and should result in the enhancement of the Fish and Game Preservation Fund.

It is recognized that there will be certain local vendor and license agent field contacts which will be necessary even if business, personnel, and licensing activities are centralized. There will still be the necessity for a variety of quasi-financial-administrative consultation between regional headquarters and the regional specialist field activities. As we have pointed out in our recommendation to add an assistant regional manager to each region, these activities would constitute a portion of the responsibilities of that position.

The committee therefore recommends that the licensing, personnel, and accounting activities be centralized in departmental headquarters.

This recommendation would result in the following reductions and additions of various personnel classifications:

Licenses

| | |
|--|-----------|
| Delete 20 regional positions..... | —\$93,630 |
| Add 15 headquarters positions plus related costs | +77,600 |
| * Net reduction licenses | —\$16,360 |

Personnel

| | |
|-----------------------------------|-----------|
| Delete 5 regional positions..... | —\$21,060 |
| Add 3 headquarters positions..... | +12,636 |
| Net reduction personnel..... | —8,424 |

Business Services

| | |
|--------------------------------------|-----------|
| Delete 10 regional positions..... | —\$62,796 |
| Add 3 headquarters positions..... | +22,800 |
| Net reduction business services..... | —39,996 |

Add:

| | |
|---|---------|
| 5 Regional Assistant Managers (\$676-\$821 suggested) | +40,360 |
|---|---------|

| | |
|--------------------|-----------|
| Net Decrease | —24,420 † |
|--------------------|-----------|

* Would decrease with license mechanization.

† Not firm—experience and job classifications may adjust slightly, plus or minus.

The primary purpose for these recommendations is to improve intra-departmental operations, rather than to eliminate positions. The estimates in the above schedule for the most part reflect departmental and BA&H appraisals. If these recommendations are effected, final review for the proposed additional departmental headquarters positions rests with the Department of Finance, the Legislative Analyst and the Legislature.

SECTION FOUR

BA&H Recommendations Nos. 6 and 7: "Four regions are recommended" and "Twenty-two land districts and three marine districts are tentatively proposed."

Both of these recommendations are contingent upon the initiating of the district-generalist concept opposed by this committee.

Therefore, the committee recommends against these two proposals by BA&H.

This does not necessarily rule out the possibility that the regional boundary delineation may be altered in the future after further appraisals, taking into account considerations based on other than the district-generalist plan.

It is not at all illogical to assume that the departmental headquarters could serve as a local contact point in the Sacramento area, supplemented with a branch office, retaining the regional office in the Bay Area for operations of the Central Valley Region. Nevertheless, a much more detailed workload and procedural analysis must be made to support any positive position for either the revision or the retention of the existing regional assignments.

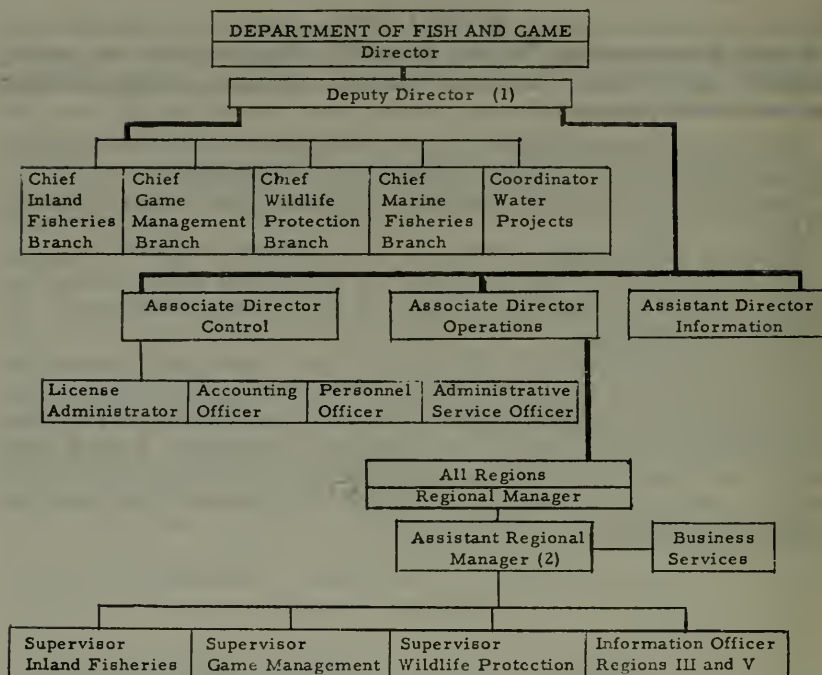


CHART 1

State of California, Department of Fish and Game

Recommended top level organization structure, department and regional headquarters

(1) Deputy director responsible for coordinating planning function.

(2) Assistant Regional Manager responsible for regional housekeeping services.

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